

*Gibbons.*  
*Hartman*  
**Law Quibbles.**

K OR, A  
**TREATISE**

OF THE

*Evasions, Tricks, Turns and  
Quibbles*, commonly used in the Pro-  
fession of the *LAW*, to the Prejudice  
of Clients, and others.

Necessary to be perused by all Attornies, and those  
who are, or may be concerned in Law-Suits,  
Pleadings, Motions, Trials, &c.

To avoid the many Abuses, Vexations, Delays and  
Expences, introduced into Practice.

To which is added,

A N

**ESSAY**

ON THE

*Amendment and Reduction* of the Laws  
of *ENGLAND*.

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In the *SAVOR*:

Printed by E. and R. NUTT, and R. GOSLING  
(Assigns of *Edward Sayer, Esq;*) for *Tho.  
Cozbutt* at *Addison's Head* without *Temple-  
Bar*; and Sold at the Bookseller's Shop at the  
Corner of *Searle-street, Lincolns-Inn Fields*.  
MDCCLXXIV.



Latin Quibuslibet

RETRACTATIS

OF THE

English, French, Italian, Spanish, and  
Portuguese, commonly used in the Pro-  
cesses of the Law, to the Judges  
of Courts, and others.

By Robert, Esq. of the Middle Temple,  
Esquire, of the Law, and of the Hon-  
ourable House of Commons, in Parlia-  
ment called.



ESSAY

ON THE

Advancement and Regulation of the Laws  
of ENGLAND.

In the Year 1751.  
By Robert, Esq. of the Middle Temple,  
Esquire, of the Law, and of the Hon-  
ourable House of Commons, in Parlia-  
ment called.

THE  
PREFACE.

**T**HE many Quibbles  
and Evasions, of late  
introduc'd in the Practice of  
the Law, are sufficient to  
Influence any one of the Pro-  
fession (especially a Person  
who has suffer'd by them)  
to undertake a Treatise that  
may expose such Artifices,  
and give the World a neces-  
sary



## The PREFACE.

*sary Caution against them:  
And this being a Topick  
which is wholly New, and of  
great Importance, all sorts  
of Persons are in some De-  
gree interested therein.*

*For these Reasons, I have  
ventured upon this Subject;  
and if I have laid open some  
Things in the Profession,  
more than they may Approve  
whose Interest it is to oppose  
the Discovery, this will be  
an Advantage to the Pub-  
lick; and the Publick  
Good ought in all Cases to  
be principally regarded. But  
tho'*

## The PREFACE.

*tho' I have inserted many of the Tricks and Quirks in the Law, I have not endeavour'd at, neither do I pretend to mention them All: The following Work is not compos'd of Quibbles alone; for it contains the various Turns and Subtilties to be met with in the Practice and Abuse of our Laws; what People may do, and what they may not do; what will be Binding, and what will be not so; with many extraordinary and curious Cases, proper to be known  
as*



## The PREFACE.

*as a Guard against Impositions.*

*I have no where thrown any Reflections on the Profession of the Law, which is in it self both Laudable and Honourable: If any Persons are expos'd, they are the foul Practisers only, who are a Scandal to it. That this is True, is Manifest throughout; and there is nothing more Absurd and Ridiculous, than to find many of the Attornies of this Age value themselves on their being Masters of a Quirk,*

## THE PREFACE.

Quirk, or Quibble, a Turn, or an Evasion; and whose boasted Qualifications lie in these, without any substantial Knowledge and Learning in the Law, which ought to make a Practicer Compleat. And I am sorry to say, that there are even Gentlemen at the Bar, who are not free from Imputations of this kind.

This is all I have to observe by way of PREFACE to the following Work; unless it be to acquaint the Readers in general, that as  
this



## The PREFACE.

*this Book was chiefly compos'd for their Use and Instruction, so they will find it consistent with their Interest to give it due Encouragement.*

Law

# Law Quibbles.

## Acceptance.

**A**S Every Person ought to be cautious in all his Transactions, otherwise many Inconveniencies will inevitably ensue, so particularly in Case of *Acceptance*; which, rashly entered into, deprives a Man of the Benefit of the Law.

If a Lessor accepts of his Rent, due at a *Day afterwards*, it will bar him of his Entry for a Condition broke before; but if the Rent was due at a *Day before*, whereupon the Condition is broken, a Man may accept of that Rent, and yet have the Benefit of Re-entry: In the first Case, the Person accepting owneth the Lease to have Con-

B

tinuance;



tinuance; which he might have avoided by Non-acceptance of the Rent. *Co Litt.* 211.

Persons entitled to *Reversions, &c.* must take Care how they accept of Rent from Tenants, lest they should give an Affirmance to a Lease wrongful made, and thereby make it good: But if a Parson make a Lease for Years, not warranted by the Statute of 32 H. 8. and dieth, no Acceptance of Rent by the Successor will make it good. *Co. Lit.*

If a Lessee, (Tenant) for Years, make an Assignment of his Lease, the Lessor, (Landlord) before Acceptance of Rent of the Assignee, may charge either the Lessee or Assignee with the Rent, at his Election: But if he once accepts the Rent of the Assignee, having Knowledge of the Assignment, his Election ceases. 3 Rep. 23.

A Lessee for twenty Years accepts of a Lease for ten Years of the same Land; the Term of twenty Years is, in Law, surrendered and determined: The new Lease shall in this Case take Place, which could not be but by the Lessee's Acceptance; by which, the Lessor hath Power to make a new Lease. 2 Roll. 469.

If an Obligor, &c. pay a lesser Sum of Money, instead of the whole, before the Day appointed, &c. and the Obligee accepteth it; this is said to be a Satisfaction. 1 Inst. 212.

### Acquittance.

If a Tenant be in Arrear of Rent for twenty Years back, and his Landlord gives him an Acquittance for the last Rent due, all the rest of the Rent in Arrear will be presumed to be paid: And

so

so strong is this Presumption of Law, that no Proof will be admitted against it. *Co. Lit.* 373.

No Man should regularly execute a Deed, wherein a Consideration of Money is acknowledged to be paid, *before* the Money is actually paid.

### ACTIONS.

Upon any Specialty, if Money be due, an Action of Debt only lies : In other Cases, there may be Action of Covenant, Account, Case, &c.

If a Man oweth another 10 l. and hath a Note under his Hand for the same, without a Seal, an Action of Debt upon a *Mutatus* lies ; and then the Defendant may wage his Law : But if the Plaintiff commences an Action on the Case upon the Defendant's Promise to pay the same, which the Law implies ; then the Defendant loseth his Benefit of Wager of Law. And in many *Actions of Debt*, it is the safest Way to make them *Actions on the Case*, wherein if you prove the Money lent, &c. the Law implies the Promise ; and by that Means the Defendant is bar'd from waging his Law. *Comp. Att.* 6. 111.

Upon a Bond or Bill for Payment of several Sums at several Days, no Action of Debt lies 'till *all the Days are past* : But if a Man be bound in a *Recognizance* to pay 100 l. on four several Days, after the first Failer in Payment of the first Sum, Execution shall be awarded for that Sum, without staying 'till the last Day is past : And for a Covenant or Promise, after the first Default, an Action of Covenant lies for the one, and Case for



the other. Note these Diversities. Co. Litt. 292.

Personal Actions *die* with the Person: As if a Battery, &c. be done to a Man, and he that did the Battery, or the other, die, the Action is gone: If a Lessee for Years commit Waste, and dies, no Action will lie against his Executors or Administrators: And if a Gaoler suffers his Prisoner in Execution to Escape, no Action lies for it against his Executors after his Death. *Noy Max.*

So that you must take Care that these Actions be commenced *in Time*: And in other Cases there is a Time limited for bringing of Actions: As all Actions of Debt, Account, Detinue, Trespass, Replevin, and all other Actions on the Case, unless for Words, must be brought within six Years after the Cause of Action: All Actions of Assault and Battery and Imprisonment are to be put in Suit within four Years after the Cause of Action: And all Actions of the Case for scandalous Words, within two Years after the Words spoken. And if in any of these Cases, Actions are brought after those Times, the Statute of Limitation may be pleaded. *Stat. 21 Jac. cap. 16.* But no Time is limited for Debt on Specialties. *2 Inst. 207.*

Actions of Trespass, Covenant, Battery, &c. may be laid in any County, at the Plaintiff's Pleasure, tho' both the Plaintiff and Defendant dwell out of the same: But every real and mix'd Action is to be laid in the *same County* where the Cause of Action arises, or where the Lands and Tenements do lie, &c. *Comp. Att. III.*

If a Man prosecutes me, and his Suit is utterly *without Ground*, and that known to himself; I may have an Action of the Case against him for unjust Vexation, and recover Damages. *Fitz. 35.*

But

But a Man may sue another for more than is due, where an *Account is depending*, and the Defendant is to prove the Payment.

**Appearance. Vide Bail.**

**Arrests.**

All Persons attendant on Courts of Record, are *privileged* from Arrests during their Attendance: And Arrests are prohibited to be made on a *Sunday*, unless it be for Treason, Felony, &c.

In Cases of Arrests for Debt, Trespass, &c. no Door may be broke open, or Latch may be drawn, to execute the Process: But where a Felony is committed, a Door may be broke open to arrest the Offender, tho' not in Civil Cases: The first Sort of Arrests are of a *private Nature*; but the last concern the *publick Good*. *Plowd. Com.* 322.

When a Person is arrested, he must either give Bail or Appearance, and proceed to Trial; or he must compromise the Matter with the Plaintiff, before the next Term, otherwise he will be serv'd with a Declaration, and Rule to plead, &c. which will put him to a Guinea or two Guineas Expenses.

On an *Escape Warrant*, and for Felony, &c. + an Arrest may be made on a *Sunday*.

**Arrest of Judgment.**

After Verdict is given in a Cause that has been tried, Judgment and Execution follow;



but Judgment may be arrested in the following Cases.

As for Want of Notice of Trial ; for that the Record differs from the Deed pleaded, in some material Point ; for some material Defect in Pleading, &c. or for that the Plaintiff before Trial treated the Jury : And herein all Matters of Fact are to be made out by Affidavit.

To move in Arrest of Judgment, is to shew Cause why Judgment should not be stop'd.

### Articles.

In all Cases of Articles of Agreement, especially relating to Matters of Importance, it is necessary that Bonds should be enter'd into on both Sides, with Penalties sufficient to oblige a Performance ; which Penalties may be easily recovered at Common Law ; otherwise all Articles of Agreement I take to be no more than the *Foundation of a Chancery Suit* ; where either of the Parties are litigious, or think it their Interest to fly from their Contract.

### Assignments.

A Lessee for Years makes an Assignment of his Term, and dies, his *Executors* will not be answerable for Rent that is due, after his Death : And if his Executors or Administrators assign over their Interest to another, Action of Debt may not be brought against them for the Rent.

Not 71.

But

## Law Doubbles.

But this is understood where *Notice is given* to the Lessor of the Assignment, and he gives his *Consent* to the same; for otherwise the Executors will be liable, as the Landlord is at a Loss where to apply himself for his Rent; and he has not determined his Choice by Acceptance of Rent of the Assignee.

An Assignee of Lands shall be receiv'd to pay the Money to save his Land, tho' he be not named in a Condition: But he shall not receive any Money, by Virtue of a Condition, unless he be named. *Co. Lit. 215.*

An Executor appointed by Will, is an Assignee in Law to the Testator's Estate.

**Attachment. Vide Distress.**

## Attornies.

Every Attorney is to enter his *Warrant* of Attorney in every Suit, commenced in a Court of Record, on Pain of forfeiting 10 *l.* and Imprisonment, &c. An Attorney, Solicitor, &c. shall not be allowed any *Fees*, laid out for Counsel, &c. unless he hath Tickets thereof sign'd by such Counsel: And he shall also give to his Client *true Bills* of all the Charges under his Hand: If he *delays* his Client's Suit for Gain, or demand more than his due Fees and Disbursements, the Client shall recover Costs and treble Damages, and the Attorney be disabled to practise.

None are to be *admitted* Attornies in Courts of Record, but such as have been brought up in the same Courts, or are well skill'd in soliciting of Causes, and of an honest Disposition: And they



they are not to admit of any others to follow a Suit in their Names, under the Penalty of 20*l*. See the Statutes 2 *Jac.* 1. and 13 *W.* 3. *N. B.* All this is very good, but the greatest Part of it wholly disregarded.

### Abolition.

An *Act of Parliament* may not be avoided but by *Act of Parliament*: An *Obligation*, or Deed in Writing, cannot be discharged but by *Agreement in Writing*: And an *Use* raised by Declaration and Limitation, may be made to cease only by an Instrument of the same Nature. *Bac.*

Every *Contract* and *Agreement* must be dissolved and avoided by Matter of as *high a Nature* as the *Agreement* it self. 5 *Co.* 26.

### Authorities.

X If a *Man* has a *Servant*, and give him *Authority* to sell *Goods*, and he doth so, it is the *Master's* Sale by him. And if a *Man's* *Servant*, known as such, be sent by his *Master* to a *Fair* or *Market* to buy *Goods*, his *Master* shall be charged with the *Payment*: But the *Goods* are to come to his *Use*; tho' it is otherwise in Case of a *Factor*, when the *Possession* of the *Master* is not necessary. *Plowd.* 475.

If a *Servant* borrows *Money* in his *Master's* Name, the *Master* will not be charged, unless he give *Authority* to his *Servant* for that Purpose, or the *Money* come to his *Use*. *Noy Max.* 99. But in Case of *Receipts* by *Servants*, where it has been

usual for the Servant to receive his Master's Money, Rents, &c. Payment to the Servant will bind the Master, tho' he doth not receive it of his Servant. +

Where a Person gives Authority to another, by Letter of Attorney, to deliver Livery and Seisin of Lands between certain Hours, and he doth it *before or after*; or to deliver it in the Capital Mesuage, and he doth it *elsewhere*, the Act of the Attorney is void: For all Authorities are to be strictly pursued, so that Care must be taken to avoid this Inconvenience. *Plowd. 475.*

Authorities generally determine by the Death of the Party which giveth them.

### Awards.

Things and Actions personal, &c. may be submitted to Award: But Debts due on Record, or upon Bill, or on certain Contract; (*which admit not of Dispute*) Things relating to a Freehold, Leases for Years, Matrimonial Concerns, and Offences of a Criminal Nature, may not be determin'd by Award; for these are not arbitrable, *1 Roll. Abj. 244. 1 Cro. 223.*

Awards must reduce Things to a Certainty, otherwise they will be void: And if an Umpire (*viz.* a third Person) be appointed to determine the Controversy the *same Day*, in Case the two Arbitrators can't agree in their Award, the Arbitrators are first to declare, that they will meddle no further, and signify their *Disagreement* before the Power of the Umpire shall take Place; and otherwise the Umpire would proceed at an Uncertainty. *2 Saund. 130.*

Vide Revocation.

Bail.



## Bail.

**I**N all Actions of Debt, where the Defendant is indebted to the Plaintiff to the Value of 10 *l.* or upwards, *Special Bail* is required; and the Sureties must be Men of Substance, answerable to the Action. A Man worth 100 *l.* is a good Surety in common Cases, where the Debt is not large.

If the Action be brought for a Debt that is under 10 *l.* it requires only an *Appearance*; and then the Attorney for the Defendant may back the Sheriff's Warrant, by indorsing that he will appear for the Defendant at the Return of the Writ, and file common Bail; wherein any Sureties are taken of Course, as *John Doe* and *Richard Roe*, it being nothing but mere Form. But an Attorney, not appearing for his Client, is liable to a Fine, of 5 *l.*

I have known *Special Bail* insisted upon, when a Man has been arrested for a Debt under 10 *l.* by enlarging the Sum in the Writ; as where the Action is laid for 30 *l.* or 40 *l.* &c. when it is usual only to lay it for double the Debt: And this may be done, so as you take Care not to Declare for more than your Debt; (tho' at the Return of the Writ, the Bail may be taken off, on Motion before a Judge) But I take it to be a very unfair and barbarous Practice.

To obtain a Man's Liberty under Arrest, besides turning him over to the Rules of the Fleet by *Habeas Corpus*, there is another Method sometimes practis'd

practis'd for Want of Bail; viz. The Defendant confesses *Judgment* to the Plaintiff, which makes all he has liable to the Debt.

In Writs of *Error*, &c. the Defendant and his Sureties are to enter into Recognizance, in double the Sum of the Debt, that the Defendant hath good Cause of Error, and will follow the Writ with Effect, &c. When a Cause is remov'd out of an Inferior Court, the Plaintiff or his Attorney are to enter *Caveats* with the Justices of the Court for good Bail; And the Attorney for the Defendant must give Notice to the Plaintiff of the Time when the Bail shall be put in, and of the Names of the said Bail, and where they live, that the Plaintiff or his Attorney may except against the Bail, if they think fit. *Comp. Attorn.* 54, 55, 64.

In Actions of Battery, Conspiracy, &c. and on the Case for slanderous Words, tho' you are likely to recover great Damages, yet can't you of Course hold the Defendant to Special Bail; In Actions of Covenant (unless to pay Money) Bail is not required, because the Damages are uncertain 'till Declaration: In Actions of Account, Trespas, *Ejectione firmæ*, on Penal Statutes, &c. good Bail is not insisted on; nor is it requir'd in Actions against Executors or Administrators, unless it be where they have wasted the Goods of the Testator.

But in some of these Cases, Special Bail has been taken by Order and Motion of Court. The Penalty of Bail Bonds is usually double the Sum mentioned in the Writ.

Bail Bonds may be assigned by Sheriffs, &c. to a Plaintiff requesting the same, by Indorsment; and



and if forfeited, Action may be brought in the Plaintiff's Name; &c. Stat. 4 & 5 Anne.

A Bail in Discharge of himself may bring in the Principal.

**Banishment.** See **Coberture.**

**Bargain and Sale.**

Tenants for Life are not to make Bargains and Sales of their Lands; for, if they do by *Deed inrolled*, it is a Forfeiture of their Estates, tho' no Fee-simple passes thereby. 4 Leon. 251.

A Bargain and Sale of Lands can't be to one Man to the Use of another: But it must be to the Use of the Bargainee only: Before Entry, the Bargainee can't bring Action of Trespass, tho' he may assign, surrender, &c. 2 Cro. 52, 146. Hob. 136.

If Money is mentioned to be paid in a Bargain and Sale, as a *Consideration* for the Lands, and in Truth no Money is paid; this is said to be a good Bargain and Sale. Dy. 90. But by *Style's Reports*, if a Deed expresses a Consideration of Money upon a Purchase, this will be *no Proof* upon a Trial that the Money was actually paid; but the same is to be made out by Witnesses. Style 370.

Bargains and Sales made of Leases for Years, Goods and Chattels, &c. need not have Inrolment, which is only necessary where a Freehold passes; and then it must be done within six Months. Stat. 27 H. 8.

**Basfards.**

## Bastards.

A Child born before Marriage, every Body knows, is a Bastard; but if it be a *Day after* Marriage, between Parties of full Age, it is no Bastard, unless there be an apparent Impossibility in the Husband; as in Case he has lost his Genitals; or be absent abroad for a considerable Time: But if he be within the four Seas, so that by Intendment of Law he may converse with his Wife; if the Wife have a Child, it will not be a Bastard. 1 *Inst.* 244.

A Bastard after he has *acquired a Name* by Reputation, may by such reputed Name make a Purchase to him and his Heirs (tho' his Heirs are limited to his own Offspring.) A Remainder may be limited to a Bastard, by the Name of Son of the reputed Father, after he is thus known: But a Bastard may not take as *Issue*; nor can he be Heir to any, or have any Heirs but of his Body. *Dy.* 374. *Co. Lit.* 3. 8.

But tho' a Bastard may not be Heir, a Man may give or devise all to a Bastard.

## Battery.

If any Person menace another with a Staff or Weapon, or if he only *stretch forth his Arm* in Anger, whereby his Intention of Striking is apparent; this is an Assault in Law, tho' never a Stroke be given, and will bear an Action. 22 *Aff.* pl. 60.

But



But if any one beat or assault me, I may justify the Beating of him: A Man may also beat another in *Defence* of his Goods, Wife, Father, Mother, &c. And a Servant may justify a Battery in Defence of his Master; for all these are but reasonable when a Battery is begun; though they ought not to be done to take Revenge, only repulse the Injury sustain'd. *Bract. 9. E. 4.*

As a Man may not injure another by Battery or otherwise, so he may not injure himself; because the Life and Members of every Subject, are under the King's Protection, to the Intent to serve him.

### Beginning.

A Man buys Cattle in a Fair or Market, which are stoin, and selleth them *out of the Market*, tho' the Beasts are afterwards brought into the Market, and the second Bargain is confirmed by the Person which brought the Cattle, who pays all his Money, and likewise the Toll for the Beasts, the Property is not thereby changed; for the Bargain shall have Relation to the Beginning, which was unlawful. *Dy. 99.*

### Bills.

A *blank Indorsement* of a Bill, *viz.* of a Name only, does not only actually transfer the Property of the Bill of Exchange; but the Person, to whom it is indorsed, has Power to *fill up* the Indorsement, by which Means the Indorser may be charged. *Salk. Rep. 126.*

All

All *Indorsors* of Bills are equally liable as the first Drawer: But it is usual, by the Custom amongst Merchants, for the Indorsee to do his utmost to receive the Money of the first Drawer: And if he cannot, then, and not 'till then, the Indorsor ought to be chargeable with the Debt.

*Acceptance* of Bills will not Charge any Person, unless the Bill be endors'd or underwritten: And on Refusal of *Acceptance*, *Protest* is necessary to entitle Costs and Interest. Stat. 3 and 4 Anne.

### Bonds.

In joint Obligations, the Obligors must be sued together; and if one be sued, he is not obliged to answer, unless the rest are sued also: But in a Bond where several are bound severally, the Obligee may either sue all the Obligors together, or all of them apart. Dy. 310. *Executors, &c.* are entitled to Money due on a Bond, and not Heirs, by Reason 'tis a Chattel: And where no Place is appointed for Payment of Money, the Obligor is to find out the Obligee, &c. wherever he is, if he be in England, and tender the Money. Dy. 14. 271.

It is convenient for the Ease of the Obligor, that a Place be appointed for the Payment of the Money, otherwise it will be in the Power of the Obligee to give him much Trouble: And the same Care is to be taken as to Time; for if no Day be limited, the Debt is due presently. Co. Lit.

And where the Condition of a Bond is made impossible in respect to Time, as to pay Money on the 30th of February, it shall be paid presently:



ly ; But if a Condition enjoins an Act to be done at a *certain Place* ; as to go to *Rome*, and there, &c. and the Obligor is to do the *sole* Act without Limitation of Time, he hath Time during Life to perform it. (If the Concurrence of the Obligor and Obligee be requisite, it may be hastened by Request.) *Co. Lit. 206. 1.*

A Man bound in a Bond to go to *Rome* in three Hours, the Condition is *impossible* and void ; and yet the Obligation is said to be good ; for all Men ought to be cautious of binding themselves. *Co. Lit. ibid.*

An Obligation made *beyond the Seas*, may be prosecuted by laying the Action here, and alledging that the Bond was made in a certain Place called, &c. in *France*, &c. in *Islington* in the County of *Middlesex*, and there it shall be tried ; for whether there be such a Place in *Islington* or not, is not traversable, so tender is our Law to give Remedy. *2 Inst. 261.*

If a Man be bound to *appear* at a Day before Justices, at which Day the Obligee casteth him in Prison, so that he cannot come, the Bond is saved ; but it is otherwise if the Obligor were in Prison for his own Act, or if he cast himself in Prison. *Noy Max. 13.*

Bonds not to use *Trades*, or till or sow Land, &c. are against Law and void ; because these are necessary for the Publick Good : And a Condition of a Bond to do any Act *malum in se*, as to kill a Person, &c. is void.

Blood.

**Blood, Descent, &c.**

He that is Inheritable of an Estate is accounted in Law the *next of Blood*. The next of the worthiest Blood shall always Inherit, as the Males and all Descendants from them, before the Females; and the Female of the part of the Father, before the Male or Female of the part of the Mother: And the elder Brother and his Posterity shall inherit Lands in Fee-simple before any younger Brother. *Co. Lit. 14.*

None shall have Land in Fee-simple by Descent, unless he be Heir of the *whole Blood*: Lands descending on the *part of the Father*, the Heirs of the Mother shall not Inherit; and Lands descending on the *part of the Mother*, the Heirs of the Father shall never Inherit. *1. Inst. 13.* But it is otherwise in case of *Purchase*, which differs from *Descent*; for if a Man purchase Lands and Die, the same shall be inherited first by the Heirs of the Side of the Father, who made the Purchase; and if there be none such, then by the Heirs on the part of the Mother. *Bac.*

**Borrowing.**

As to Borrowing, if Corn, Wine, or other Thing *that is Perishable*, be borrowed, and suffered to Perish, the Borrower shall make them Good; but if a Horse, or other thing which may be *used and delivered again*, are borrowed and used in such manner as they were lent, if they perish the Owner of them shall bear the



Lofs, unless the Borrower promise to deliver them safe again, in which Case he will be chargeable. *Noy. 91.*

If a Man lends his Horse to another to ride to *York*, and he rideth it further; the *Riding further* is not unlawful, nor shall an Action of Trespass be brought upon it. *Finch. 47.* But if this can be prov'd, and the Horse is injur'd thereby, I take it an Action, of the Case may be brought for Damages.

### Buildings.

If a Stranger have Lands adjoining to a *new-built* House, he may Build upon his Lands, tho' in carrying up the same he darkens the Windows of his neighbour's House: But if the House be an *ancient* House that has *Lights*, it will alter the Case; for Prescription will then take place, and an Action lie for the Injury. *Lev. Rep. 122.*

### Burglary.

If a Person enter a House when the *Doors* are *open*, this may amount to a breaking in Law, from an unlawful Design; but it is no Burglary unless the Door, Window, &c. be actually Broken; or the Door be unlocked, or latch Drawn; In which Case, it is Burglary, tho' the felonious Act be *not* executed. *3. Co. Inst. 44. 4. Rep. 39.*

Where Thieves, in the Night-time, finding a Door lock'd, *knock at the Door*, and pretend they come

come to speak with the Master of the House, whereupon the Servant opens the Door, and they come in and rob the House: And where Persons give out that they are robbed, and on this Presence make *Hue, and Cry*, in pursuit of which with a Constable they demand Entry into a House, and the Owner thereof opens the Doors, whereupon they bind the Constable and rob the House; these Acts are adjudg'd Burglary, tho' the House be not broke. *Kel. Rep.* 42. 62.

Entering a House by the Help of a Key; coming down a *Chimney* by Night to rob, are Burglary. And if a Robber set his *Foot* over the Threshold, after a Door is broke open; or put his Hand, *Pistol*, &c. within the Window or Door, it is an Entry. 3. *Inst.*

### Certainty.

**L**eases for Years must have a *certain* Commencement, and Determination; and a Lease may be made good by *Reference to a Certainty*: As if a Lease be made during the Nonage of a Person who is fourteen Years of Age, it is a good Lease for seven Years, provided the Minor live so long: If a Man make a Lease of Lands for so many Years as he hath in a Manor, and he hath a Term of ten Years, this is sufficient to pass the Term of ten Years: And if a Person make a Lease to another for so many Years as the Lessee shall nominate, when the Lessee hath made his Nomination, it will be a good Lease for his Term; But if the Years are left to the Appointment of a Man's Executors, their No-



mination after his Death will not be binding.  
*Plowd.* 273. *Bract.* 6. *Co.* 20.

A Man by Contract may refer the Price of a Thing sold to the Judgment of a third Person, who shall reduce it to a Certainty. A Lease for Years of Land paying so much an Acre, the Rent may be fix'd to a Certainty by Admeasurement of the Acres. If a Man give or lease all his Lands to one, and say nothing further, the Lessee shall have all his Lands in England; but if it be express'd in such a Mannor, then it is restrain'd, for the Certainty appears.  
*Plowd.* 6. 173.

All Proceedings at Law are to be certain and Affirmative, so that the Defendant may be at a Certainty as to what he should Answer to.  
*Plowd.* 84.

### Certiorari.

Indictments from inferior Courts, and Proceedings of the Quarter-Sessions of the Peace, &c. may be remov'd into the Court of King's Bench by *Certiorari*: And this is a common Method in Practice, in order to obtain stricter Justice in Determinations. *Suits*, may be also remov'd from inferior Courts by *Certiorari*, but the thing in Demand must exceed  $\text{5} \text{ } l.$  Value: If it be under, Writ of Error or Attaint must be brought. *Stat.* 21. *Jac.* 1.

Chancery.

## Chancery.

The Court of *Chancery* relieves Minors, Feme Coverts, Persons from Frauds, Deceits, and unreasonable Engagements; It *confirms* Titles; *obliges* Performance of Wills, Executors to give Security, Men to account with each other, &c. where there is *no Redress* at Common-Law; but Suits in this Court must be for something of the Value of 10 l. and upwards (except in cases of Charity) and for Lands of above 40 s. per Annum. *Comp. Attorn.* 356.

A Cause cannot be Tried by a Jury in this Court when the Parties come to *Issue*, by reason it is a Court of Equity, but the Record is to be sent into the *King's-Bench*, and tried there; tho' after the Trial is over, it is to be remanded into the *Chancery*, where Judgment is to be given.

No *Subpœna* or *Process*, is to Issue out of the Court of *Chancery*, till a Bill is filed, except in Injunctions to stay Proceedings at Law, &c. See, *Costs*.

## Change of Property.

If Writings are put in a Box, this will alter the Property of the Box from being a Chattel, and it shall go to the Heir. *Noy.* 7.

A Man cuts down the Trees of another, and squares them to make Beams for a House, the Person injur'd may seize the same; But if they are once *laid in the Building*, their Nature is then alter'd, and they may not be seized, because  
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they



they are become a Part of the House, which may not be pull'd down. *Dodd. 143.*

### Church.

If a Church *fall down*, it is said the Parishioners are not obliged to rebuild the same, but as they are oblig'd to keep the same in due *Reparation*, this is a Thing that very seldom happens. 2. *Vent. 35. 2. Cro. 366.*

A Patron cannot *present* himself to a Church; but he may be admitted by the Ordinary, which answers the End of Presentation. Patrons are to Present within six Months next after the Avoidance, or else the Right will devolve upon the Bishop by *Lapse*; and if the Bishop do not Present within a further six Months, the Right will descend to the Archbishop; and if he do not present within six Months afterwards, it belongs to the King: But if a Patron presents his Clerk after the six Months, and before the Bishop hath *collated*, his Presentation is good. 1. *Inst. 135. 2. Inst. 273.* *Papists* are disabled to present themselves; but they may grant the next Presentations to others.

Parishioners who do not Pay to any Church-Rates, have not a *Vote* in Affairs relating to the Church, except the Parson or Vicar. 5. *Rep. 67.*

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## Law Doubbles.

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### Combination.

Combinations and Confederacies, to execute unlawful Acts, [are punishable before the unlawful Act is perpetrated: The Law punishes the Conspirators to prevent the Consequence of the Conspiracy; and tis for this Reason that the Commission of Oyer and Terminer gives Power to the Judges to enquire of Combinations, Confederacies, &c. 9. Co. 57.

### Common-Pleas.

This Court cannot regularly hold any Plea in Actions Real, Personal, or mixt, but by Writ out of Chancery returnable in this Court; unless it be by Bill for or against an Officer or other *privileg'd* Person of the Court, &c.

The Common-Pleas hath no Cognizance of Pleas of the Crown.

### Compulsion.

If a Man or Woman is compelled for fear of Imprisonment to enter into a Bond, Deed, &c. such Compulsion will invalidate the Deed or Bond: And if a Person threaten another to make a Deed to a third Person, the Deed shall be equally Void, as if such third Person had made the threatning. Co. Lit. 253. 2. Co. 9.

A Man is Imprison'd until he makes a Bond at another Place, and afterwards he does so, when he is at large, this is by Duress of Imprisonment.



A Person menaces me to make a Bond of 20 l, and I tell him that I will not comply with it, but that I will give him Bond for 10 l. this shall be adjudg'd by Compulsion and Void. *Bac. Max. 81.*

A Marriage consummated by *Duress* is voidable: If a married Woman Levies a *Fine* with her Husband, she must be examin'd in Private whether she doth it voluntarily, or by *Compulsion* of her Husband. *Dyer. 359.*

### Conditions.

A Man grants to another by Deed the Office of Parkership of a Park, or any other Office, To hold the same during the Life of the Grantee; the Grantee hath an Estate in the Office upon *Condition in Law*, that he well and faithfully executes all Things belonging to the Office, and not otherwise; for if he fails in his Duty, the Grantor may remove him, and Constitute another. *Co. Lit. 224.*

This is a Provision by Law for the Grantor where there is no express obligatory Covenant, on the part of the Grantee, for performing the Duty of his Office.

Tenant by the Curtesy, Tenant in Tail after Possibility of Issue extinct, Tenant in Dower, Tenants for Life or Years, &c. hold their Estates subject to a *Condition in Law* not to grant a greater Estate than they have, nor to commit Waste, &c. *Co. Lit. 233.* Vide more, *Feoffments.*

## Construction.

If a Man retains a Servant, *without* expressing for what time, the Law construes it to be for a Year, the usual time, directed by Statute. If Tenant for Life makes a *Lease generally*, by Construction of Law it shall be taken for his *own Life* and not the Life of the Lessee: If Tenant in Tail make such a Lease, it shall also be for the Term of his *own Life*; for otherwise, in both these Cases, it would work a Wrong to him in Reversion: But if Tenant in Fee-Simple grant a Lease of Lands to another, to hold for Term of Life, without mentioning whose Life, it shall be adjudg'd for the *Life of the Lessee*. *Co. Lit* 183.

Where the Lessor hath Power to make a Lease for the Life of another, it will be good; and an Estate for a Man's *own Life*, is of a higher Nature than that for the Life of another Person.

## Contracts.

Contracts for the Sale of Lands are to be in Writing: And for the Sale of Goods of 10 l. Value they will not be binding unless the Buyer actually *Receives* part of the goods Sold; gives something in *Earnest*; or some *Note* thereof be made in Writing signed by the Parties to be charged by the Contract. *Stat. 29. Car. 2.*

f. 3.  
All Sales of Goods are to have a valuable *Consideration*; And a *Shilling* or a *Penny* accepted in



in Earnest, will make the Contract binding. If I say I will sell my Horse for 5 *l.* and another Person standing by says he will give me 5 *l.* and *presently* go to telling out the Money, I am debarr'd from selling my Horse to any other; but if the Buyer doth not pay me *presently*, it alters the Case. *Noy Max. 87.*

If a Man agrees for Goods, he may not carry them away *before paid for*, without Leave of the Seller; as where a future Day of Payment is appointed, &c. See *Property, Merchants.*

### Covenants.

If a Man Demise Lands to another for a certain Term of Years, the *Law* intendeth a Covenant on the Part of the Lessor, that the Lessee shall quietly Enjoy, against all Incumbrances. (But this is understood so long as the Lessee pays his Rent; for otherwise he may be ejected) *F. N. B. 145.*

Any one that is Party to a Deed of Covenants, may take Advantage thereof; and an *Executor* or *Administrator* may take Advantage of *Inherent Covenants*, altho' *not named*: If a Man Covenant with another to pay him Money at a Day to come, and do not pay to his *Executors*, &c. If he dies before the Day of Payment, the *Executors* or *Administrators* shall be entitled to the Money. *Dyer 112, 271.*

*Executors*, &c. are also bound by *Inherent Covenants*, such as concern the Thing granted, tho' they are not nam'd: But if a Man covenant to do any Thing, his *Heir* shall not be bound unless he is expressly nam'd. *Dyer 257.*

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If a Man Covenant to *Serve* me a Year, and I Covenant to pay him a Sum of Money for it, I am obliged to pay him tho' he do not serve me; for he may bring his Action of Covenant; but then I may compel him to serve the Time agreed; But if I Covenant to pay him a Sum of Money, if he serves me a Year, it is otherwise. *Co. Lit. 204.*

### Costs.

If a Plaintiff *Dismisses* his own *Bill* preferr'd in Chancery, or the Defendant *Dismisses* the same for want of Prosecution; or if a *Decree* be obtain'd in behalf of the Defendant, in either of these Cases Costs are allow'd to be tax'd by a Master. If in a Trial at Law, a Plaintiff makes *Default* in his Appearance, he shall be *Non-suited*, and the Defendant shall have Costs: In other Cases, Costs are allow'd taxed by the Prothonotary, &c.

A *Subpœna* being serv'd in Chancery, the *Bill* must be put in in due Time, or else if the Defendant appears, and no *Bill* be fil'd, Costs will be allow'd. If a Defendant fails to make *Answer* by the Day prefix'd, or if he do not shew to the Court sufficient Cause of Delay, *Attachment* will be had against him; and on Attachment for Non-appearance, the Defendant must pay 20 s. Costs before he will be discharg'd; and every succeeding Process double as much. If a first *Answer* be return'd *insufficient*, the Defendant must pay 40 s. single Costs; the second *Answer* *insufficient* pays 3 l. Costs; and the third 5 l. And you may have *Subpœna* both for your Costs, and to make better Answer. A *Replication* may be amend-



amended in eight Days without paying Costs.  
*Comp. Attorn. 410.*

Upon one and the same *Subpoena serv'd*, two Bills may be put in, provided the Matter contain'd in them appear not to be one and the same Cause; for if it do so, one of them may be *dismiss'd* with Costs. In Cases of *Injunctions* to stay Proceedings at Law, if on Examination no Matter of Equity be found, the Cause is again dismiss'd to the Law, with Costs.

Bills and Proceedings in Chancery ought to be short and succinct, and set forth only the Substance of Deeds, &c. and they are not to contain any Matter *Criminal* or *Scandalous* against the Defendant, &c. If they do, a Defendant may not only refuse to answer, but may recover Costs against the Plaintiff, and his Counsel.

### Vide Declaration.

### Coverture.

A Man must answer for the *Trespases* of his Wife; and if a Feme-Covert Slander any Person, the Husband and Wife may be sued for it. If Money be receiv'd by the Wife, the Husband may be charged for it as his own Receipt; and Action of Debt lies against the Husband for Goods delivered or sold to the Wife, for the Law presumes they must come to his Use: But the Wife may not make any *Contract* without the Consent of the Husband; unless it be for necessary Apparel, Necessaries for her Family, &c. 2 Co. Inst. 713.

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A Woman sole indebted takes Husband, whereby she is under Coverture, it is then the *Debt* of Husband and Wife, and both are to be sued for it; but after the Death of the Wife, the Husband is not liable, unless there be a Judgment obtain'd against them both during the Marriage. *Pract. Reg.* 105.

A Man during the Coverture, at the Common Law, cannot either in Possession, Reversion or Remainder, *limit an Estate* to his Wife, because they are one Person in Law: But by Statute 27 H. 8. A Man may Covenant with others to stand seised to the *Use* of his Wife, or make any other Conveyance to the Use of his Wife; but *not* Covenant with his Wife: And a Man may devise Lands by *Will* to his Wife, because the Will hath not Effect 'till after his Death. *Co. Lit.* 112.

If a Husband *abuse* his Wife, as if he threaten to Kill her, &c. she may make him find Surety of the Peace: and if during the Coverture, he *Alien her Lands*, which he may do, she may Recover them after his Death by *Cui in vita*. *Co. Lit.*

In case of the Husband's *Banishment*, a Feme Covert may act as lawfully as the Husband might, if he were not dead in Law.

### Courts.

The County Court, &c. holds Plea between Party and Party, where the Debt or Damage is under 40 s. In Replevin the Sum may be above 40 s. And by Writ of *Justicies* it may hold Plea of any Sum, or of all Actions Personal above 40 s. &c.

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If a *Freehold* be pleaded by the Defendant, this Court cannot proceed: And nothing shall be intended to be within the *Jurisdiction* of Inferior Courts, but what is expressly alledg'd to be so. If Part of the Cause arise within an inferior Jurisdiction, and Pass without, the inferior Court ought not to hold Plea, 1 *Lev.* 104. 2 *Rep.* 16.

If the Court of *Common Pleas* hold Plea in *Appeal* of Death, &c. and the Defendant is *Attaint*, it is *Coram non Judice* and Void: An Action lies against any *Officers*, that execute *Processes* of Courts, which act where they have no *Jurisdiction*; but where a Court has *Jurisdiction*, and proceeds erroneously, &c. it will be otherwise, 10 *Co.* 57.

*Officers*, *Marshals*, &c. guilty of *Extortion* for doing their Offices, are to render treble Values, &c. *Stat.* 3. *Ed.* 1.

### Debtor and Creditor.

Where there is a Debtor, with a *Surety*, and Creditor, and the Principal Debtor and Creditor by Compact, without the Privity of him who is *Surety*, continues the Debt after the Day of Payment, when the *Surety* supposes it to be paid; in this Case, the Court of *Chancery* will compel the Creditor to take his Relief from the Principal Debtor, and Discharge the *Surety*. 10 *Jac.* *Totbil.* 181.

In Debt, the Defendant may plead *Payment* (before Action brought) in Bar; and Pending an Action, the Defendant may bring in Principal, Interest, and Costs, and the Court will give Judgment to Discharge him. *Stat.* 4 & 5. *Ann.*

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## Declarations.

Upon a *Latitat* in the *King's-Bench*, you may Declare against the Defendant in as many Actions as you please; but in the *Common-Pleas* you must have for every Action one Original. And in the *King's-Bench*, the Plaintiff hath longer Time to Declare than is allow'd in the *Common-Pleas*, if the Defendant do not appear in Person; and then you must Declare within three Days after.

If the Attorney for the Plaintiff do not Declare against the Defendant upon his Appearance within reasonable Time, the Attorney for the Defendant may enter a Rule against the Plaintiff to Declare, and thereupon Cause a *Non Prof.* to be enter'd, which being sign'd by the Prothonotary, Costs will be given. When the Plaintiff has Declared, the next Term (after Imparance, &c.) his Attorney is to call to the Attorney of the Defendant to answer the Declaration, and if he do not plead in due Time, he is to give him Rule to answer; which done, and the Rule expired, Judgment will be entered by *Nihil dicit*. *Comp. Attorn.* 39, 40.

A Prisoner in Custody may be charged in Prison with a Declaration, and for want of Plea, Judgment may be had against him: But if the Declaration be not entered or left in the Office, before the End of the next Term after the Writ (by which the Prisoner was taken in Custody) is returnable, and Affidavit of it made and filed before the End of twenty Days after such Term, or ten Days if it be Easter Term, the Prisoner upon entering his Appearance, shall be Discharged by Writ of *Superfedeas*.

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One may not Declare, in the Court of *King's Bench*, against a Man that is not either in *Custodia Mareſcalli*, a Privileg'd Person, or one that hath filed Bail; for no other Way can a Man be said to be present in Court, so as for the Court to take Conſulance of the Matter.

The Plaintiff may *Amend* his Declaration in Matter of *Form* after General Issue pleaded before Entry, *without* paying Costs; but if he Amend in *Subſtance* he is to pay Costs, or give Imparance: And after a special Plea, tho' he give Imparance, he must pay Costs.

### Deeds.

In Deeds, the *Conſideration* is a Principal Thing to give them Effect: If Land is convey'd to a Man and his Heirs, *without* *Conſideration* and without expreſſing any Use or Intent, this is adjudg'd to the Use of the Person who made the Deed, and he may dispose of it at his Pleasure: But if it be to any certain and just Intent, it may be otherwise; as it may be also if a *Conſideration* be paid.

If a Woman, in *Conſideration* of 500 l. paid her by her Son, by Indenture conveys her Land to him and his Heirs, to the Use of her self for Life, and after of the Heirs of her Son; In this Case, the Fee Simple by Law is in the Son presently, and the Use for Life to the Mother void; because of the *Conſideration* paid: But if there were no *Conſideration* it would be contrary. *Totbil.* 188.

By these two Cases is shewn the Use of *Conſiderations* in Deeds; but Proof must be made of  
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of the Payment, &c. - And all Deeds ought to be *Construed* according to the just Meaning of the Makers: They must have a reasonable *Expofition*, without Injury to the Grantor, to the greatest Advantage of the Grantee. *Plowd.* 160. 161.

If an illiterate Person be bound to Seal a Deed, he is not obliged to do it, if none be present to Read it, and also to expound it, if Written in Latin: And *Reading a Deed* false will make it Void. 2. *Cō. 3.*

A Deed may be good without either *Date* or *Conclusion*: But if it be *razed* or interlined by a Stranger in a *material* Part, by this it will be Void; tho' this may be help'd by Memorandum on the back of the Deed. 1. *Roll. Rep.* 40.

A latter Covenant in a Deed may not be pleaded in Bar to a former; as a later Deed cannot take away the Effect of the *first* Deed. But a Deed by what is Subsequent may be sometimes qualified and abridged, tho' not destroy'd. *Dy.* 56. 2. *Vent.* 218.

The Foundation of Deeds ought to be always Just and Honest; and where the Words may be employ'd to some Intent they will be Good. *Vide* Fraudulent Deeds.

### Default. *Vide* Costs.

### Defeazance.

A Deed of Defeazance will not defeat an Estate in Tail, or for Life, &c. (executed by Livery) unless the Defeazance be made at the Time of making the Feoffment or other Conveyance, and



and not afterwards : But *Executory Inheritances*, as Rents, Annuities, Conditions, Warranties, Covenants, Leases for Years, &c. and also Obligations, Recognizances, Statutes, &c. may be defeated *after* they are created : And these last are most commonly the subject Matter of Defeazances. *Plowd.* 137.

### Demand.

Demand of Rent, in order to *Re-entry* on Lands for a Condition broken, must be upon the Land it self, which is obliged as Debtor ; and it must be at the most *notorious Place*, as the Fore-door of a House, &c. or if Demand be made at a Place which is not Notorious, as at the Back-door of the House, &c. the same will be void. *Co. Lit.* 201.

An *Action* has been said to be a good Demand for a Debt by Bond or other Specialty after it is due ; because the Obligor is bound to tender the Money at the Day. &c.

Demand is necessary to preserve *Claims*, Debts, &c. from being lost by the Statute of Limitations.

### Demurrer.

If a Defendant *Demurs* to a Declaration, it must be under a Serjeant's Hand.

In *Demurrer* to Evidence, where a Plaintiff shews in Evidence Deeds or Writings, &c. upon which a *Question of Law* doth arise, and the Defendant offers to Demur upon it, the Plaintiff  
must

*must join* in Demurrer, or wave his Evidence. But if Evidence to prove a Fact is given for the King in any Suit, or on Information, &c. and the Defendant offers to Demur upon it, the King's Counsel are *not obliged* to join in Demurrer; but the Court ought to direct the Jury to find the special Matter. 5. Rep. 104.

Both the Plaintiff and Defendant may Demur upon the Defendant's Evidence produc'd to prove a Fact upon which a Matter of Law arises. 2. Inst. 426. In Criminal Cases, if the Criminal joins Issue upon a Point of Law in an Indictment, allowing the Fact to be true as laid in the Indictment, which is *Demurrer*; if the Indictment be allow'd to be good in Law by the Opinion of the Judges, they proceed to Judgment and Execution, as if the Party had been Convicted by Confession or Verdict. So that a Person Indicted at Sessions ought to be careful how he joins Issue upon a Point of Law.

By the Stat. 4. and 5. Ann. For Amendment of the Law, the Causes of Demurrer are to be specially set down, or the Judges are to give Judgment, without regarding Imperfections in Writs, &c.

Descent. Vide Blood.

### Detainer.

Tho' for *Detinue* Actions may be brought, yet in Contracts a Man may detain his Goods Sold, till he is Paid for the same: Inn-keepers, Tailors, or other Artificers, may detain the Horse, Robe, &c. until reasonable Satisfaction be made. Dyer, 302



And others may detain Goods, &c. of Debtors, till the Debt is satisfied.

If a Lessor Covenant to repair the House, but do not, the Lessee may do it and withhold as much of the Rent as will Pay himself. *Stat. 12. H 8.*

### Disseisin.

When any Man wrongfully enters on the Possession of another, and puts out the right Owner of the Freehold and Inheritance, he thereby gets the Freehold and Inheritance by Disseisin; and if such Disseisor (having peaceable Possession five Years) continue in Possession, and die seised, whereby the Lands descend to his Heirs, they have a Right to the Possession till the Person that hath Right recovers; and if no Suit be prosecuted within sixty Years, after the Disseisin, the right Owner will lose his Estate for ever. *Bac. Elem.*

If a Man oblige another to swear to surrender his Estate unto him, and he do so, this amounts to a Disseisin. To disturb one from Manuring of his Land, is a Disseisin of the Land it self: And to turn a Stream running to a Mill, is a Disseisin of the Mill it self. *Co. Lit. 161.*

### Distress.

A Distress ought always to be made of such Things whereof the Sheriff may make Replevin, and deliver again in as good Case as they were at the time of the Taking. And if the Rent be  
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not Paid, or the Distress replevied, within the Space of five Days the Goods are to be apprais'd and Sold for Payment thereof.

An *Horse* in an Inn, Sacks of *Corn* in a Mill, Market, &c. Materials in a Weaver's Shop for making of Cloth, another Man's *Garment* in the House of a Taylor, &c. may not be distrain'd, for they belong to others, and are for the Good of the Publick: And a Man may not be distrain'd for the Instruments of his *Trade* or Profession; nor may Cattle of the Plough, Books of a Scholar, &c. be distrain'd when other Goods may be taken. *Co. Lit.* 47. In a Town where Goods, may be attached for Debt, a Horse may be seized; but I take it the Rider must be off from it, otherwise it may be an Assault on the Highway.

When a Distress is taken it is to be carried to the common Pound, or to be kept in an open Place; but in the last Case, Notice is to be given to the Owner of it, of the Taking, and the Place where it is, that if the Distress be a Beast he may give it Food; and then if the Beast dies for want of Food, the Owner shall bear the Loss, and the Party distraining may take another Distress for his Rent or Duty. But it will be otherwise if no Notice be given. *Comp. Attorn.* 179.

Distresses are to be reasonable; and not to be taken in the Highway, or driven out of the Hundred, except of Cattle, to a Pound overt in the same County, &c. under the Penalty of *5 l.* and treble Damages: Persons distraining others, on purpose to Injure them, shall pay treble Damages; (*Rescous* and Pound Breaches incur also treble Damages) and where a Distress is taken, and no Rent is due, double the Value of the



Goods and full Costs may be recovered. Stat. 51  
H. 3. 13. Ed. 1. 1 Ph. & M. 2. W. & M.

A *Tenant* may not lawfully remove Goods from an House, &c. before his Rent be paid, without Licence from the Landlord; and if they are fraudulently convey'd away, they may be seized in five Days, wheresoever found, &c. Stat. 8 Ann.

### Divorce.

Upon a Divorce, the Woman shall have the Goods given in Marriage, *not* being spent; for the Goods were given in Advancement of the Woman, and therefore it is reasonable that she should have them. Dyer 13.

Divorce is a Dissolution of Marriage; and if a Woman be divorced a *Mensa & Thoro*, the Cause not being for Elopement or Adultery, she may sue the Husband for *Alimony* or Maintenance out of his Estate, either in the Chancery or Spiritual Courts, and Recover; but if the Cause of Divorce proceed from Adultery or Elopement, it will not be allow'd.

Issue after a Divorce are reputed Bastards.

### Dower.

If a *Jointure* be made of Lands to the Wife before Marriage, she cannot wave it and claim her Dower; but if the Jointure be made after the Marriage, she may refuse the Lands appointed her in Jointure, and have her Dower. 1 Inst. 36.

If a Wife be *evicted* of her Jointure, she shall be endow'd according to the Rate of her Husband's Lands, whereof she was Dowable; and if the Husband *alien* his Lands, yet the Wife shall be endow'd of her third Part, unless she debar her self by her own Act, as by levying a Fine, &c. But the Husband must be sole seized, for in Case of Jointenancy, Survivorship will take Place before Dower. *Co. Lit. 31.*

If a Wife commit any Crime, as Treason, Felony, &c. or Elope from her Husband, and live with the Adulterer without being reconcil'd to her Husband, she shall *Forfeit* her Dower; and if a Husband commit *Treason*, the Wife shall not be endow'd: But the Treason of the Husband will not work the Forfeiture of a Jointure; because this is usually made in Consideration of a Marriage Fortune. *2 Inst. 435.*

### Election.

**A** Man Devises to one Man 20*l.* to another 20*l.* and to a third Person a like Sum, and maketh his Executor, and dies, having Goods only his Debts being paid, to the Value of 20*l.* Now it is in the Election of the Executor to pay the 20*l.* to *which* of the Legatees he thinks fit, and the others have no Remedy; and if one of the Three be made Executor, he may retain the Legacy to himself. *Co. Lit.* But yet it is but just and equitable that the 20*l.* should be *distributed* amongst them, as the Testator intended them equal Benefit from his Estate; or that the first named should be preferr'd.



## Entry.

In Cases of *Descent*, Entry of the Heir seems to be necessary on the Death of the Ancestor, to entitle the Heir to the Rents and Profits of the Land: Lands may be recovered by *Writ of Entry*. An Estate of Freehold will not cease *without* Entry or Claim; and where a Man will take Advantage of a Condition, he must *Enter*, and when he cannot Enter he must make his *Claim*. *Co. Lit.* 218. If a Man dare not Enter for fear of Death, he is to go as near as he can to the Lands and make his Claim, &c. and it will be good.

Entry must be in a *peaceable* Manner; for tho' a Man have Title of Entry, he may not enter by Force on pain of Imprisonment, &c. Recourse must be had to the *Law*. And a Man may gain Possession by Entry, when he has Right of Entry, and the same is not taken away by Law, *viz.* by *Descent* or *Discontinuance*: By *Descent*, where a Disseisor dieth seized, and the Law casteth the Lands upon the Heir; by *Discontinuance*, where Alienation is made of Lands by Tenant in Tail, &c. In which Cases the Persons having Title, and the Issue in Tail, &c. have no Right of Entry, but are driven to their Action. 1 *Inst.* 237. 1 *Roll.* 632.

A Man having divers Children, and the Eldest being a *Bastard* Enters into the Land, and enjoys it quietly during his Life; If he dies seized, his Heirs shall hold the Land against the lawful Children. If an *eldest* Son having Issue die, and after his Decease, the *youngest* Son, &c. Enters, and many Descents are cast in his Line, yet may the Heirs of the Eldest Son make an Entry

try on the Lands : But if the youngest Son convey away the same by Feoffment in Fee, and the Feoffee dies seized, it will be otherwise ; because then the Privy of Blood of the Eldest Son is determin'd. *Co. Lit.* 244.

As to Entries in other Cases, the Law allows a Man Power to Enter a Tavern ; a Landlord to enter to view Repairs, and take Distresses ; a Commoner to enter Lands to see his Beasts, &c. But if he that enters a Tavern, commits a Trespass ; or if he that enters to view Waste, breaketh the House ; or the Commoner cut down Trees, the Law will Judge it that they entered for that Purpose. 8 *Co.* 146.

Entry and Claims on Fines. Vide Fines.

### Error.

After Judgment had by *non sum Informatus*, Confession, or otherwise, in any Cause (not tried by *Nisi prius*), it may be revers'd by Writ of Error, if there be any material Variance between the Additions in the Original, or the Process of *Capias*, *Alias*, *Plures* and *Exigent* ; if the Writ be not duly return'd and filed, with the *Custos Bre-vium* ; if there be not Warrants of Attorney duly filed, and put into the Office as the Cause requires ; if the Debt demanded in the Process, and the Debt in the Judgment recover'd do not agree, &c. which are Causes of Error.

Upon a Writ of Error brought upon a Judgment had in the Common Pleas, and return'd into the *King's-Bench*, the Proceedings thereof must be only in the *King's-Bench* : A Writ of Error



ror upon a Judgment had in the *King's-Bench*, in Actions of Debt, Case, Trespafs, &c. must be returnable in the Exchequer Chamber; and the Cause of Error heard and determin'd before the Lord Chief Justice of the *Common-Pleas*, the Lord Chief Baron of the Exchequer, and the rest of the Judges and Barons who are of the Coif of those two Courts; and if the Error be found and allow'd by them, then the Judgment is reversed; but if it be not found and allow'd to be good, the former Judgment is affirm'd, and Costs for Execution allow'd to the former Plaintiff; and tho' there be a Reversal of the Judgment, the Plaintiff may commence a *new Action* against the Defendant for the same Cause if he think fit. *Comp. Attorn.* 66, 67.

An *Outlawry* may be reversed, where the County Days are mistaken; where sufficient Time is not allow'd between any of them; the Person is misnam'd; the Sheriff's Name omitted or mistaken; by Words which will bear no Signification; by any Error to be found in the Return of the Proclamation, or for want of filing the Proclamation; want of Returns and Mistakes in the original *Capias, Alias, &c.* And Error in this Case, is either to be allow'd or disallow'd by one of the Judges of the Court.

### Escape.

A Person which suffers a *wilful* Escape, is liable to be punish'd for the same Crime, for which the Parry escaping stood committed: but if a Man receives a Felon, and suffers him to get away before *Apprehension*, this is no Escape.

*Gaulins*

*Gaolers* suffering Felons wilfully to Escape is Felony; and for a negligent Escape, they are Fineable. And to Bail one not bailable by Law, is a negligent Escape. 3 Rep. Plowd. 476.

### Estates.

If an Estate be granted to a Man, to hold to him *for ever*, or to Him and his Assigns for ever, this makes but an Estate for *Life*, for want of the Word *Heirs*; for a *Fee-Simple* Estate, must be made to a Man and his *Heirs for ever*. And if one gives Lands to a Man and his *Issue*, or Children of his Body, without the Words his *Heirs*, to Convey the Inheritance, he has but an Estate for *Life*: But in case of a Will it may be otherwise. Co. Lit. 20.

An Estate for one *Thousand Years* is not a Freehold, or of so high a Nature, in Constriction of Law, as an Estate for *Life*. 1 Inst. 6. If any Person or Persons for whose *Life* or *Lives* any *Estates* have been granted, are *absent* above seven Years, and no Proof is made of their being Living, they are to be accounted naturally Dead. And those in Remainder, &c. may move the Lord Chancellor, once a Year, to order Persons to be produc'd; on Affidavit that there is Cause to believe that the Tenant for *Life* is Dead, &c. See Statutes 19. Car. 2. & 6 Ann.

Estate



## Estate Tail.

All Lands of Inheritance may be Entail'd ; but if an Inheritance be *Personal*, or exercis'd with Chattels, it cannot be Entail'd. An Annuity granted to a Man and the Heirs of his Body will be void : And a *Lease for Years* to a Man, and the *Heirs* of his Body, is void ; for the Chatrel cannot be turn'd into an Inheritance : But it may be *assign'd* in Trust for the Issue in Tail to receive the Profits, which is in Effect an Estate Tail. 10 Rep. 87. 4 Inst.

An Estate of *Fee-Tail General*, is where Lands are given to a Man and the Heirs of his Body ; or to a Woman and the Heirs of her Body : And *Fee-Tail Special*, is where Lands are granted to a Man and his Wife, &c. and the Heirs of their two Bodies ; so that it is certainly set down of whom the Issue shall proceed. A general Tail will frustrate a special Tail, created at one and the same Time. And a Gift to Heirs Male, &c. without limiting of what Body, is a Fee-Simple. Co. Lit. 26, 27, 28.

A Tenant in Tail cannot lawfully grant a greater Estate than for his own Life ; nor make *Leases* otherwise than for twenty one Years, or three, Lives reserving the accustom'd Rents, &c. according to the Statute 32 H. 8. But 'tis incident to his Estate to be dispunishable of Waste ; and a *Condition* to *Restrain* him from Levying a Fine, or suffering a Recovery, to bar his Issue, (which are incident to his Estate) is void : But  
a Gift

a Gift in Tail may be upon Condition that the Tenant in Tail shall not *Alien, &c.* *ro Rep.*

39.

**Evidence.**

An Alien Infidel; one *non Sane Memorie*; a Party interested in the Suit; a Wife for or against her Husband, (unless it be in Cases of Treason) Persons attainted of false Verdict; convicted of Perjury or Subornation; of Forgery; that have stood in the Pillory, &c. and Persons convict of Præmunire and Felony, not pardon'd, are *excluded* by Law from being Evidence in any Cause.

But a Jew, (who may be sworn on the old Testament) Kinsmen tho' never so near allied; Tenants, Servants, Masters, &c. and others not Infamous, or as are not Parties in Interest, will be *good Evidence*: But the Credit of Witnesses, in case of Servants, &c. shall be left to the Jury: An Attorney may not be examin'd against his Client. *1 Inst. 6. 4 Inst. 279.*

A Man is not allow'd in Civil Cases, to be an Evidence in his own Cause. *Co. Lit. 6. Deeds* may be given in Evidence, and so may Shop-Books, &c. See *Stat. 7. Jac. 1.*

See more, **Witnesses.**

**Exception.**



## Law Quibbles.

### Exception.

A Bill of *Exception* is allow'd to *Evidence*, when the Court does not agree to a Demurrer for Insufficiency of the Evidence: But in Criminal Cases this Privilege of Exception by Bill to the Evidence ceaseth. And Exceptions may be made to a *Juror*, where one of the Parties is of Affinity to him, is his Master, or he hath any Interest in the Thing demanded; if the Juror hath given a Verdict before in the same Cause; or if after he is return'd he eats and drinks at the Charge of either Party; if the Juror is convicted of Felony, Perjury, &c. which is call'd *Challenge*: But in Criminal Cases, for compassing to kill the King, &c. Challenge will not be allow'd but for Malice. *Co. Lit.* 155. Exception to *Indictments*, &c. must be before Evidence is given in Court. *Stat.* 7. *W.* 3.

Exceptions may be taken to an *Answer* in *Chancery* for Insufficiency, and the Matter refer'd to a Master in Chancery, who is to Report whether it be Insufficient or not; to which Report Exceptions may be also made.

These last Exceptions oftentimes tend to the *delaying* of Suits, and equitable Proceedings.

### Exchanges.

In Exchanges the *Estates* and Interests mutually granted must be *Equal*; but it is not necessary that the *Value* or Quantity of Lands should

should be Equal. There needs no Transmutation of the Possession, and therefore a Release of Rent, &c. in Fee, for Land in Fee, will be good: But Annuities may not be exchange'd for Lands. *Co. Lit. 50.*

Lands in Fee, Fee-Tail, for Life or Years, may be exchange'd, so long as the *Estate* in the Lands be *the same* on both Sides; but if a Fee Simple be exchange'd for a Fee-Tail, &c. the Exchange is void, or at least voidable by a Man's Issue, &c. *Lit. Sect. 22.*

A Man gives three Acres of Land in Exchange for three other Acres, and he is *evicted* of one Acre; in this Case all the Exchange is defeated, and he may make an Entry on his own Lands; for there is a *Condition of Re-entry* tacitly annex'd to this Deed, if either of the Parties are put out of Possession, 4 *Rep. 121.*

**Exchequer.**

The Plaintiff, in Causes prosecuted in the Exchequer, ought to be a *Tenant* or Debtor to the King, or some way Accountant to him: And the Proceedings of the Court of Equity, in the Exchequer, are agreeable to the High Court of Chancery; but the Plaintiff must set forth that he is Debtor to the King; tho' whether he be so or not is not Material.

In this Court our Clergy generally exhibit Bills for Recovery of their *Tithes*.

**Excuse.**



## Excuse.

Ambassadors are excused of Practises against the State where they Reside, *unless* it be in case of *Conspiracy*; which is contrary to the Laws of Nations. *Bac. Max. 26.*

If a *Felony* be committed by a Man and his Wife, the *Wife* shall be excused on Account of her Obedience and Subjection to her Husband; the Law will suppose that she acted by the Command of her Husband; but if they join in committing *Treason*, which is against the Common Wealth, the Obedience of the Wife will *not* Excuse her: And if she alone steal Goods, &c. without the Husband, this is *Felony* in the Wife. *13 H. 8. 3. Inst. 310.*

If a Person Kill another meerly in his own Defence, he will be excused for the same.

## Executions.

Goods of a Stranger, or Goods pawn'd, in the Possession of the Defendant; Things annex'd to the Freehold; Goods bought *Bona fide* depending the Action, shall *not* be subject to Execution: And if Chattels are sufficient to pay the Debt, Lands ought not to be extended. *2 Inst. 472, &c.*

Sheriffs may sell *Terms* of Years for Debt, by Writ of Execution; but Leases for *Life* are not saleable for Debt; tho' the Sheriff may extend the yearly Profits. If you sue forth a Writ of *Fieri Facias* against the Defendants Goods, and

Levy

Levy Part of the Debt, but not the Whole, you may afterwards have a *Capias ad Satisfaciend'* against his Body, or an *Elegit* for the rest: But if you first *Imprison* the Defendant on a *Capias ad Satisfaciend'*, then you cannot have a *Fieri Facias* against the Goods, or an *Elegit*, whilst the Defendant continues in Execution; (but if he die, you may have either of them). And after an *Elegit* executed and filed, you can have no other Execution. *Comp. Attorn.* 47.

In case a *Judgment* have continu'd above a Year and a Day, and no Execution taken out thereupon, the Party Recovering, must renew it by *Scire Facias*, unless he hath sued forth Process from Term to Term, and filed the same; which will warrant an Execution after a Year and a Day; but in Case of the Death of either Plaintiff or Defendant, the Judgment must be reviv'd by *Scire Facias*.

If a Defendant be outlaw'd after Judgment, and he cannot be arrested within a Year and a Day, the Plaintiff is not oblig'd to renew the Judgment, &c. by *Scire Facias*; but in other Cases it is otherwise.

*Executors* are not liable to Execution for the Testator; but if there be any Freehold, it may be taken on the *Heir*. One Year's *Rent* is to be paid to a *Landlord*, where his Tenants Goods are taken in Execution, before the Removal of the same. See *Stat.* 8 *Ann.*

### Executors.

If a Man accepts an Executorship, and pays any Debts before those of a Higher Nature, he

E

is



is liable to the Payment of all the rest, tho' out of his own Estate: And taking any of the Goods of the deceas'd, will make a Man Executor in his own Wrong, and liable to Debts; for *Carveat Actor. Plowd. 543.*

The Executor is, to pay all the Debts of the Testator before any Legacies: And the Debts are to be paid in the Order following; first, Debts to the King, Debts on Judgments, Statutes, &c. Then Debts on Mortgages, Bonds, and other Specialties; and then Rent is to be paid, Servants Wages, Debts on Shop-Books, &c. This the Executor must observe at his Peril.

Any thing given by way of Legacy, may be sold for Payment of the Debts, if there be not enough otherwise to pay all the Debts; and Executors, &c. have as Assets, Chattels, Real and Personal, Leases for Years, Rehts, Corn cut and growing, Grass cut and sever'd, Trees cut, Cattle, Money, Plate, Household-stuff, &c. Debts, Judgments, Statutes, Obligations, &c. But not Lands, Freehold, Grass and Trees growing, Incidents of a House, as Doors, Wainscot, &c. Pales, Walls, Fishponds, Deer, Conies, &c. for these belong to the Heir. *Co. Lit. 209. Plowd. 293. Dyer 575.*

Debts first prosecuted shall be first paid by the Executor, tho' they are but in equal Degree with others; in other Cases priority of Time may take place; and Debts of a higher Nature may be paid in the whole, tho' there be nothing remaining to pay the smaller Debts.

It is good and safe to be early in prosecuting Executors for the Debt of the Testator; but where the Testator might Wage his Law, no Action will lie against the Executor.

Executors

Executors have the Advantage of *Inherent Covenants*, as for Payment of Money, &c. tho' they are not named.

Vide *Covenant*, &c. *Extortion*. Vide *Courts*.

### Frauds, and Fraudulent Deeds.

OUR Laws are design'd for the Advancement of Truth, and Suppression of Frauds. And Acts, as well Judicial as others, which of themselves are *Just and Lawful*, being mix'd with *Fraud and Deceit*, may in Judgment of Law be censur'd as Injurious and Unlawful; so that Care should be taken to avoid this Mixture. 3 Co. 78.

Deeds of Gift, Grants, &c. made with Intent to defeat Creditors of their just Debts, are void as to and against such Creditors, &c. And Gifts made in Secret are liable to Suspicion of Fraud: All Grants, Conveyances, &c. made of Lands or Tenements, to Defraud any Purchaser of the same for valuable Consideration, as against such Purchaser, and all Persons claiming under him shall be void. Persons putting such Grants, &c. in Use as good, are to forfeit a Year's Value of Lands, and the whole Value of Goods and Chattels, &c. and be also imprison'd: Where Lands are convey'd with Clause of *Revocation*, &c. and afterwards Sold for a valuable Consideration, the first Conveyance shall be void against the



Purchaser; (but this is not to extend to Mortgages made *bona fide*). And *Devises* of Lands, Rents, &c. are deem'd fraudulent and void against Creditors upon Bonds, or other Specialties, &c. Stat. 13. & 27 Eliz. 3. & 4. W. & M. &c.

If a Man make an *Assignment* of his Lease, and yet keeps possession of the Lands, the Deed of Assignment will be adjudg'd Fraudulent: A *Presentation* obtain'd by Fraud, is void: Letters of *Administration* procur'd by Fraud, are likewise void: And *Sale of Goods*, altho' it be in the open Market, if it be by Fraud, will not be binding. 1 Vent. 329, F. N. B. 98. These are glorious Laws; but nevertheless our designing Men, find out Ways to Evade them; for tho' Money may be prov'd to be paid as a valuable Consideration, it is not easy to prove it return'd, or to prove a *private Trust*, or the *real Intentions* of Parties, &c.

The *Chancery* indeed *Relieves* Frauds and Deceits, where no Remedy is to be found at Law; but how will they be always discovered to obtain this Relief? A *Conveyance* is made to Friends *in Trust*, to the Use of a Man's own Children, with a Remainder over, &c. the Court of Chancery may at least enable, if not compel the Feoffor to sell Part of the Lands, to pay his Debts. And if a Man conveys his Lands, to Friends in Trust, and afterwards sells the Inheritance, the Trust in Equity shall go to the Purchaser. *Torbil* 43, 44.

Persons making fraudulent Conveyances to multiply Votes at *Elections* of Members to Parliament, are to be taken against the Persons, making them free and absolute, &c. Stat. 10. Ann.

Feoffments.

### Feoffments.

A Man makes a *Feoffment*, or other Conveyance, of Lands in Fee, upon Condition the Feoffee shall *not take the Profits*, this Condition is contrary to Law, and *Repugnant*; and the Estate absolute: But yet a *Bond* with Condition that the Feoffee shall not take the Profits may be good. *Co. Lit.* 206.

A Man seised in Fee may make a *Lease* for Life or Years, with Condition not to *Alien* during the Term, &c. and it will be good; but in a *Feoffment* in Fee, &c. such a Condition will be void; (as it will be where a Sale is made of a Chattel, of all a Man's Interest). A Feoffment upon Condition that the Feoffee shall not *Alien*, is void, because the Law gives a Power to Tenant in Fee to *Alien* to whom he pleases; but it is otherwise in case of Tenants in Tail. *Hob. Rep.* 261.

A Feoffment in some Respects has been held to *Excell* the Conveyance by *Fine and Recovery*, for it clearth all *Disseisins*, *Abatements*, *Intrusions*, &c. but no Feoffment can be made of such Things whereof *Livery of Seisin* cannot be made, as Rents, Reversions, &c. *Co. Lit.* 5, 9, 49, &c.

This was the *usual Conveyance* at Common Law; but of late the Conveyance by *Lease and Release* is generally made Use of in its stead.

### Fines and Recoveries.

A Fine Bars only *Heirs in Tail*, and not Remainders or Reversions; but a *Recovery* bars them all.



A Fine may be levied of all Things in *esse tempore Finis*: But no Fine bars any Estate in Possession or Reversion, not turn'd to a Right; and he that at the Time of the Fine levied had not any Title to Enter, but meerly a *future Interest*, shall not be barr'd by a Fine, and *Non-Claim*, until five Years after its coming in *esse*. Strangers to Fines, such as are not Parties or Privies, have *five Years* to enter and claim their Right, &c. as have likewise Infants after they come of Age, Feme-Coverts after their Husband's Deaths, Prisoners after their Enlargement, &c. But Privies in Blood, as Heirs of the Cognizors, claiming by the same Title as their Ancestors, are *barred presently*. *Plowd.* 367. *Raym.* 151. On Entries made to avoid Fines, Action must be prosecuted in one Year after, or they shall not avoid a Fine with Proclamations, &c. 4 & 5 *Anna.*

If either of the *Parties* to a Fine *die*, after the Cognizance, and before the King's Silver is enter'd, it will avoid the Fine, and it cannot be made good; but if the *King's Silver* be enter'd, and the Party die after this, the Fine shall be finished; for it is then accounted a Fine in Law. *Co. Lit.* 9. *Dyer* 220.

Lands bought by *several Purchasers*, and of several Persons, may pass in one *joint Fine*; which is commonly done to save Expences where Estates are small. And Fines are of divers Kinds, single or double, either with Proclamations or without; but a Fine with Proclamations (according to the Statute) is the best sort of Fine, and most used in Practice. 2 *Inst.* 219.

A common Recovery is *Fictio Juris*, a formal Act by Consent, used where a Man is desirous to cut off an Estate Tail, Remainders, &c. It is much

much favour'd by the Law, and supposes a Re-  
compence in Value to all Persons that lost the  
Estate.

### Felony.

If a Man hath the *Possession* of *Goods* once *law-fully*, tho' he afterwards carries them away with an ill Intention, it is not Felony: A *Taylor* receives Cloth from another to make a Suit of Cloaths, and then *imbezils* it, is not guilty of Felony: Neither is a *Carrier* who has Goods delivered him to carry to a certain Place, unless he opens the Pack, and takes away Part of the Goods, or carries them to a wrong Place, which shews a Design of stealing them: But if a *Shop-keeper* deliver Goods to *one* who pretends to buy them, and he *runneth away* with them, this will be Felony, because the Goods were not fairly out of Possession of the Owner, without completing the Contract. 3 *Inst.* 107. *Kel.* 82.

If a Man make use of a *Process* at Law to obtain Goods, where he hath no Property, and the Goods are delivered to him, this is a Felonious taking; so is also the getting Goods out of a House upon an *Ejectment*, where a Man hath no Title. *Sid.* 254.

Stealing Winding-Sheets from dead *Persons* is Felony, and all *Thefts* are either Felony or Larceny; but a *Feme-Covert* cannot steal her Husband's Goods; but if she deliver the Goods of her Husband to an Adulterer, this will be Felony in him. A *Husband* receiving his Wife may be *Accessary* to a Felony; but if the Wife receives her Husband, she will not be *Accessary*; for she



is not bound to discover the Offence of her Husband. 3 *Inst.* 108, 310.

If a *Felony* ensue of *another Nature* than what was advis'd, the Adviser shall nevertheless be Accessary. *Dalt.* 396.

### Forbearance.

If a Man grant to another Common for ten Beasts in such a Common; or ten Loads of Wood out of such a Coppice, to be taken yearly for three Years; tho' the Grantee forbears to enjoy his Common, or to take his Allowance of Wood for two Years, he may not have Common for thirty Beasts, or have thirty Loads of Wood the third Year: And if a Man grant *Estovers* to be spent in such a House, notwithstanding the Grantee burns his *own Fuel* therein, yet he can demand no Allowance for that he took them not. *Bas. Max.* 23.

### Forfeiture of Estate.

*Tenants* in Tail after Possibility of Issue extinct, *Tenants* by the Curtesy, or for Life, &c. suffering a *Recovery* by Covin, without the Assent, and to the Prejudice of him in Remainder or Reversion, such Recoveries are void, and are Forfeitures of the Estates of such Tenants: If they *Alienate* their Estates in Fee, it is likewise a Forfeiture to him in Remainder or Reversion. A *Copyhold Tenant* refusing to do Suit of Court, or to pay his Rent to the Lord when demanded on the Land; committing Waste upon his

Copy

Copyhold; or making a Lease for longer Time than a Year, &c. without Licence, are Forfeitures of his Estate: But a Copyholder for Life may surrender to another in Fee, and be no Forfeiture of his Estate; for it passeth to the Lord by the Surrender, and not by Livery. Co. Lit. 63. 1 Co. 22.

Persons committing *Treason, Felony, &c.* incur a Forfeiture of Estate: But *collateral Blood* may inherit, notwithstanding Attainder; tho' the *lineal Blood* is corrupted and cannot. A *Felo de se* forfeits his Goods and Chattels.

### Forma Pauperis.

Every poor Person having Cause of *Action*, shall have original Writs and Subpœna's *Gratis*; and the Judges of the Court, where the Suit is depending, shall assign him *Counsel* and an *Attorney*, who are required to dispatch his Business without Fees. Stat. 11. H. 7.

If a *Pauper* is nonsuited or overthrown on Trial, &c. he shall not pay Costs, but be *punish'd* as the Judge shall think fit. Stat. 23. H. 8.

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### Gifts.

IF a Man say to another, Here, I give you my Ring with the *Ruby, &c.* and deliver it with his own Hand; this will be a good Gift, tho' the Ring bear a Diamond, or any other Jewel,



Jewel and not a Ruby: And if a Man give a Horse to *A. B.* being present, and say unto him *A. C.* take this Horse, it will be a good Gift, altho' he is called by a wrong Name; but it would be otherwise, if the Horse were delivered for the Use of *A. C.* where *A. B.* was meant by the Giver. *Bac. Max. 87.*

When a Man is married to a Woman, all her Goods and Chattels by Gift in Law, become the Husband's: If a Man be made *Executor* of a Will, the Law gives him the Goods of the Testator: And if a Person make a Suit of Cloths for another, and puts it on upon him to use and wear, this will be a Gift, or Grant in Law of the Apparel made. *Co. Lit. 351.*

### Grants.

When a Grant is *incertain*, and the Words of it are Ambiguous, the Grant shall be taken most strongly against the Grantor: And if a Deed be good for Parcels, and for some Parcels not, that which is for the Advantage of the Grantee will stand good. If a Grant be made to a Man and his Heirs, the Word *Assigns* is included in the Word Heirs, and the Grantee may assign at his Pleasure: And if a Man grant to another Timber Trees, the Grantee may come upon the Ground, to cut them down and carry them away, through the Grantor's Land. *Plowd. 15. 1 Saund. 322.*

Dashes and Abbreviations in Grants are to be so taken, that the Grant be not void: *Tot. il. Maner. de A. & B.* may be taken either in the Singular or Plural Number, rather than the Grant shall be void; and tho' a Writ may abate for false Latin,

*Latin*, yet in a Grant it shall not avoid it, 9. Co. 48.

In Grants there must be a Foundation of Interest; and the Law will not allow of Grants of Titles, or imperfect Interests, or of such as are merely future. If a Man grant a Rent Charge out of a Manor, when he hath nothing in the same, tho' he afterwards purchase the Manor, the Grant is void: But a Man may Covenant to Purchase a Manor, and levy a Fine to Uses, which will be good. *Perk. 15. Bac. Max. 58.*

### Habeas Corpus.

**A** Habeas Corpus Removes a Person and Cause, from one Court and Prison to another: And where a Person is arrested, and can procure no Bail, he may Remove himself by this Writ either to the Fleet or the King's-Bench Prison; and go at large within the Limits of those Places. The common Expence of this last is 5 or 6*l*.

If a Prisoner is committed to the Fleet upon Habeas Corpus, and the Commitment is not filed and recorded by the Prothonotary, in this Case if the Prisoner Escapes, no Action will lie against the Warden of the Fleet for the same; so that to prevent this Inconvenience, the Attorney that sues forth the Habeas Corpus, must duly file the same in the Prothonotary's Office, that it may be Recorded as it ought. *Comp. Attorn. 55.*

Heirs.



## Heirs.

One cannot be Heir till after the Death of his Ancestor ; before he is called *Heir Apparent* ; and by the Common Law a Man cannot be Heir to Goods and Chattels. No Heir to *Lands* coming by the *Father*, may Inherit them till after his *Death* ; but *Lands* descending from an Ancestor of the *Mother* he may. *Co. Lit.* 8, &c.

An Heir shall never be bound by any express *Warranty* but where his Ancestor was bound by the same *Warranty* ; for if the *Ancestor* be not bound, it cannot descend upon the Heir. If a *Rent Charge*, &c. be granted to one and his Heirs, the Grantee shall not have Writ, of Annuity against the Heir of the Grantor (tho' there be *Assets*) unless the Grant be for *him and his Heirs* : And the Heir by the Grant of an Annuity by the Ancestor, altho' he be named, shall not be bound, unless he have *Assets*. An Heir bound by a Bond, may plead *Riens* by Descent. *Co. Lit.* 144. 386.

If there be no Heir Male to an Estate in Fee-Simple, &c. but divers Females, as Daughters, &c. they shall Inherit together, and are by the Law esteem'd but one Heir, call'd *Parceners*. The eldest *Parcener* is to chuse her Part first, in case of *Partition* ; and if *Partition* be made of entail'd Lands, it must be equal to bind the Issue ; but of Fee-Simple Lands it is otherwise. *Co. Lit.* 166.

Vide Blood, Descent, &c.

Heirs

## Heir-Looms.

A Man seized of an House, and possess'd of divers *Heir-Looms* that by *Custom* have gone with the House from Heir to Heir, *devise* the same from the Heir, this devise will be void ; for the Will takes not Effect till after the Death of the Testator, and by his Death, the Heir-Looms by the ancient Custom are vested in the Heir. *Co. Lit.* 185.

But Sale in a Man's Life-time, to take Effect presently might make it otherwise.

## House-Burning.

Burning of Houses *maliciously* or voluntarily is Felony : And if a Man maliciously or voluntarily burns his *own* House to the Intent to burn others, it is Felony in him, if the Intention be executed : But if his own House only is Burnt, it will not be Felony ; tho' it is then a great Misdemeanor, punish'd by Fine, Pillory, &c. *3. Cro.* 378.

If Servants thro' *Negligence* set Fire to Houses, they shall Forfeit 100*l.* or be sent to the House of Correction for eighteen Months. *Stat. 6. Annæ.*

**Ampli:**



### Implication.

**W**hen the Law giveth any thing to any one, it giveth Implicitly whatsoever is Necessary for the enjoying of the same.

If Land be granted to a Man, the Law allows him a Way to it; if a Lessor upon his Lease excepts the Trees, he and those who are willing to buy them may come on the Lands and view the Trees, &c. And a Landlord may enter the House and Lands of his Tenant, to see it is in Repair, by Implication of Law, without their being expressly mentioned. 11. Co. 52. &c.

### See Reservation.

### Incapacity.

Persons attainted of Treason, or Felony, Ideots, Lunaticks, Men Blind, Deaf and Dumb from their Nativity, Women-Covert without their Husbands, Infants, &c. are incapable to make any Deed of Gift, Grant or Conveyance, except it be in some special Cases; But Bastards, such as are Deaf, Dumb, or Blind, that have Understanding and can express their Intentions; Persons Excommunicate. Out-law'd, &c. are capable of making any Deed, or Grant.

Persons in Office, Ecclesiastical Persons, Sergeants at Law, Counsellors, Attornies, &c. refusing to take the Oaths of Abjuration, &c. are incapable to execute their Offices and Employments;

ments; disabled to Sue in Law or Equity, and to be Guardians, or Executors; and to forfeit 500 l. Stat. 13. W. 3. 1 Ann. 1 Geo.

### Incumbrances.

A Man is Bound to another, in a certain Penalty, to save him harmless against all Suits and Incumbrances brought or to be brought by a third Person; and afterwards this third Person Sues the Obligee, and Proceeds to Judgment: Now tho' in the Eye of the Law, until Goods or Lands are *actually charged*, there is no Damage; yet in this Case there is an *executory Damage*, and a Man's Land is in some sort charged; for who will Purchase it of the Party but under Value when it is liable to the Judgment *executory*. *Ridgley's Case* 33. *Eliz.*

### Indiamentts.

Indiamentts are brought at the *Suit* of the *King*; and they must set forth the Christian Name, Surname, and *Additions* of the Estate, Place of Residence, &c. of the Offender; the Certainty of *Time* wherein the Offence is done, as the Day, Year, &c. the *Nature* of the Offence; and the *Value* of the Thing by which it is committed, &c. and a Man may be indicted by *another Name* than his right Name, where he is known by both; or for stealing Goods from an *unknown Person*, &c. (But in *Treason*, &c. the Officers of the Crown are not obliged to set



set down the very Day the Fact is committed.)  
Co. Lit. 303. 2. Inst. 318:

If these Things are not observ'd, the Indictment may be *quash'd*; but *false Latin* (so as it be Latin) shall not quash an Indictment: If a Man be convicted upon an *insufficient Indictment*, and no Judgment be given upon it, he may *again be indicted*; If an Indictment is Void for Insufficiency or if the Trial be in a wrong County, *another Indictment* may be drawn for the same Offence; and it may be laid in *another County* tho' Judgment be given. H. P. C. 244. 5. Rep. 121.

When the Indictment is found, in the proper County, it may be heard and *determin'd* in any other County, by *special Commission*; but the Trial ought to be by Jurors of the proper County. If one be indicted of Treason, it may, by pleading a *Foreign Plea*, be Tried in a Foreign Country: But in cases of Murder, Felony, &c. the Offence shall be tried where the Indictment is taken, if no special Commission be sued out. 3. Inst. 27.

By 1. Geo. High-Treason committed within the Realm, upon the late Rebellion, was to be tried in *any County* the King thought fit.

### Informations.

The Clerk of the Crown, in the King's Bench, is not to receive or File any *Information* for Trespas, Battery, &c. without expresse Order in open Court; and before he Issues any Process he is to take a *Recognizance* in a certain Penalty, for the Plaintiff to prosecute with Effect. If the

the Defendant appears, and the Plaintiff do not proceed to Trial in a Year's time; or if Verdict pass for the Defendant, the Court will award Costs, &c. Stat. 4. & 5. W. & M.

An Informer is to exhibit his Suit in Person; and not to compound the Offence, under the Penalty of 10 l. and Punishment by Pillory: But this relates to Crimes of a publick Nature, beyond Trespass, &c. Stat. 18. Eliz.

### Infants.

Before the Age of 21. No Man or Woman can Alien any Lands, Goods, or Chattels or bind themselves by Deed; except it be for common Necessaries, such as Eating, Drinking, Apparel, Schooling, Physick, &c. suitable to their Qualities: An Infant must Pay for these; but if he bind himself by Bond for Payment, he may plead *Infra Etatem* to such Bond. Co. Lit. 171.

An Infant may do any Thing for his own Advantage, as to make a Purchase &c. but at his full Age, he may either agree to the Purchase and Perfect it, or disagree to it at his Pleasure. Co. Lit. 2. &c.

Things of Necessity must be done by Infants; as Presentation to Benefices, &c. Otherwise Lapse will incur against them: And if one within Age be appointed Executor, upon Payment of a Debt due to the Testator, he may make an Acquittance. Infants are bound by our Statute Laws, where they are not excepted. 1. Inst. 171, 172.



At fourteen Years of Age a *Man* may consent to *Marriage*, choose his *Guardian*, &c. And this is accounted the *Age of Discretion*, as to committing of Crimes ; for a Person to be a *Witness*, &c. At twelve years Old one may take the Oaths of *Allegiance*. A *Woman* must be nine years Old to be entitled to *Dower*, and twelve to consent to *Matrimony*, &c. And it is said that a Person under Age may by *Will* dispose of *Goods*, &c. tho' he may not grant them in his Life-time.

### Innkeepers.

Innkeepers are accountable for all Things deliver'd to them by their Guests ; and if a Man come to an Inn, and deliver his Horse to the Hostler, saying nothing to him, and the Horse is Stolen either from the Stable or a Pasture abroad, the Innkeeper shall be obliged to make it Good : But if the Owner give Order to the Hostler to put the Horse abroad into a Pasture, and the Horse is Stolen from thence, or Lost, in such Case the Innkeeper may be excused. 8. Co. 34.

And as Innkeepers, &c. are answerable for what they Receive ; so are their Guests, as to Plate, &c. set before them ; which it is Felony to take away.

### Intentions.

The *Intention* of Parties is the chief thing to be regarded in Contracts ; and such Words as shew the

the *Assent of Parties*, and have Substance in them, are sufficient: By the Intention of Persons, *Mistakes are rectified in Deeds*; A Bond made from *A. B. to C. D. solvend. to A. B.* it has been adjudg'd good to *C. D.* And an Indorsement on a Bond, by the Obligee only, has been held valid, from the Intention. *Plowd. 141.*

In *criminal Cases*, if a Man having a *malicious Design* to Kill another, Kills a Person *not intended*, he shall be adjudg'd a Murderer; (and formerly *the Will* was so Material in felonious Attempts, that it was reputed *the Fact* it self) where a Person in the Night breaketh a House, &c. with an Intent to commit Felony, it is a capital Offence. If a Man take Goods, tho' he remove them *never so little*, if he be apprehended *before* he gets away, it is Felony; and if a Thief is taken before he has led the Horse out of the Pasture, this will be Felony, from the Intention. *3. Inst. 108. Plowd. 474.*

**Jointure.** See Dower.

**Issue.**

After a Suit is begun, in the Courts at *Westminster*, and the Parties in their Pleadings *vary* in some *Point of Fact*; as if in Action of Debt, the Defendant denies it to be his Debt, or in Action of Trespass for taking of Goods, the Defendant denies that he took them, &c. then the Plaintiff is to prove the Debt from the Defendant, that he took the Goods, &c. upon which Denial and Affirmation the Law saith that *Issue* is join'd between the Parties.



In real Actions, Causes grown to Issue are tried by a Jury of twelve Men of the County where the Cause of Action arises, whether they are brought down in Time of Vacation, &c.

### Jurymen.

Jurymen are to have each of them 10 l. per Annum Freehold or Copyhold within the same County; and Tales-Men 5 l. per Annum: Stat. 4. & 5. W. & M. (By 23. H. 78. Felons may be tried in Corporations by Freemen worth 40 l. in Goods) And Constables, &c. are to return to the Justices of Peace in the Quarter-Sessions, Lists of Persons qualified to serve on Juries, which are to be impannell'd by Sheriffs, &c. Stat. 7. & 8. W. 3.

Jurymen are to be Freemen, indifferent, and not outlaw'd or infamous Persons. Aliens, Men attainted of any Crime; Apothecaries, Clergymen, Infants, Persons seventy years Old, &c. ought not to serve on Juries: If they are impannell'd they may be excepted against; as also if they are of Affinity to either Party, interested in the Suit, &c. Co. Lit. 154. 3. Inst. 24. 27.

The Jury are Judges, upon Evidence, of Matters of Fact: And sometimes a Special Jury is granted, which is done by the Prothonotaries taking out the Names of forty eight Persons from the Sheriff's Book of Freeholders, whereof each Party strikes out twelve, and the Sheriff impannels the rest. See more of Jurors, Verdict.

Challenge of Jurors. Vide Exception.

Just:

### Justices of Assize, &c.

Justices are to take an Oath to serve the King; to do Justice to all, without Respect of Persons; and deny Right to none, tho' commanded by the King; to take no Bribes; maintain no Suit; nor give Counsel, where they are Parties, &c. and to be answerable in Body, Lands, and Goods: Stat. 18, Ed. 3.

Justices of Assize and Goal Delivery, are to hold their Sessions in the chief Towns of every County: But no Justice, or other, learned in the Law shall be Justice of Assize in the County where Born, or he doth Inhabit. under the Penalty of 100 l. but this is not to extend to the Clerk of Assize, or any Associate, &c. nor to prejudice any Justice of either Bench in hearing and determining Assizes in those Courts, &c. Stat. 33. H. 8.

The twelve Judges are commission'd to go in several Circuits twice a Year in every County of England, except Middlesex; and Judge of Civil and criminal Causes, in their Courts of Assizes.



## King's Bench.

**E**Very Person sued in the Court of King's Bench, is supposed to be in the *Custody* of the *Marshal* of the Court: This is on the *Plea-side*, in Actions by Bill, for Debt, Detinue, Covenant, Account, Actions on the Case, &c.

On the *Crown-side*, this Court has Cognizance of all Treasons, Felonies, Breaches of the Peace; and all Causes prosecuted by Indictment, Information, &c.

## Sec. Certigrari.

## Law Books.

**K**ing William the Conqueror, being a Native of Normandy in France, caused the Laws of this Realm, in his Time, to be written and pleaded in French; which is the chief Reason why most of our Law Books of Antiquity were Printed in the French Language: for it was not originally design'd to keep People in Ignorance, as some Persons imagine, or to make the Study of the Law difficult. 3. Co. 71.

**Leases.**

All Leases, Estates, &c. of Lands, not put in Writing and signed by the Parties, will have the Effect of Leases at Will only. Stat. 29. Car. 2.

A Lease is sealed by the Lessor, and the Lessee hath not sealed the Counterpart, yet *Action* of Covenant may be brought upon the Lease, against the Lessor: But where an Indenture of Lease is sealed by the Lessee, and not the Lessor, nothing operates in respect of the Estate or of the Covenants. *Yelv. 18. Owen Rep. 100.*

A Lease for Years may commence from a Day to come, as *Michaelmas* next, three or seven Years after, or after the Death of the Lessor, &c. But a Lease for Life of any thing, if it be *in Esse* before, it is said cannot begin at a Day to come: But a Lease in *Reversion* may be made, for Life, which commences at a Day that is future. *Co. Lit. 5.*

Leases are to be certain as to their Commencement, and Determination; to have the usual Covenants, Ceremonies, &c. the Lessees must accept of the things Demised: And if of the Wife's Lands, it is to be made by Husband and Wife, &c.

Vide, Acceptance, Certainty, Estate Tail, Tenants, &c.

**Liberty.**

Upon all Occasions the Law of England is favourable to Liberty. By *Magna Charta*, and other Statutes.



Statutes, no Freeman is to be *imprison'd* or condemn'd, on any *Accusation*, without Trial by his Peers, or the Law : No Persons are to be *Arrested* without Process at Law, Indictment, &c. and none shall be *ejected* of his Freehold but by Law.

All this is in favour of Liberty; and my Lord Coke tells us that the most general Rule is that every Trial shall be out of that Town, Precinct, &c. within which the Matter of Fact issuable is alledg'd, or the nearest, thereunto; the Inhabitants whereof are suppos'd to have the best and most certain Knowledge of the Fact committed. *Co. Lit. 125*

If a Jury be return'd from a wrong Place, or by a wrong Officer, tho' Verdict be given, Judgment ought not to pass thereupon. *Co. libid.* This is still in favour of Liberty: And is owing to our Liberty that we are a Great, Flourishing, and Happy People.

### Liberty of Seisin.

Livery of Seisin is *made*, by taking a Ring, Latch, or Key of the Door of a House, or a Clod of Earth, if it be Land; Twig of a Tree, if it be Wood, &c. and all the People being out of the House, Ground, &c. the Ring, Clod, or Twig, &c. with the Deed are to be deliver'd over to the Person that is to take Possession, or his Attorney, saying the usual Words, viz. " I " *A B. &c.* do deliver to you *C. D. &c.* Possession and Seisin of this Messuage, &c. To hold to you, your Heirs and Assigns, according to the true Intent and Meaning of the Deed.

" &c."

“ &c.” After this the Feoffee, &c. enters into the House, &c. first alone, and shuts the Door; but soon opens it, and lets in the others.

The Livery of Seisin is to be *endors'd* on the Deed, with the Time of executing it, attested by Witnesses; and it is necessary in Feoffments, Leases for Life, &c.

### Lunaticks.

If a Madman commit a Murder or Felony, he shall not suffer as a Felon; because the Punishment of such can be no Example to others, and they are without Mind and Discretion. But if a Lunatick Kill the King, or offer to Kill him; he shall be Guilty of Treason, and may suffer accordingly; for the King being the Head and Safety of the State, his Person is Sacred. *4 Co. 124.*

If a Person of Malice set a Madman upon killing another, and he doth it; in this Case forasmuch as the Lunatick is *excus'd*, because the Law adjuges he cannot have any Will or Malice, the Inciter, tho' he be absent, will be a principal Murderer. *13. Eliz.*

A Madman cannot Promise, or Contract for any thing, or Transact any Affairs, because he understands not what he does: His Acts may be avoided, (unless he Levy a Fine, acknowledge a Statute, &c.) And the King has the Care and Custody of the Lands of Ideots and Lunaticks; finding them and their Families Necessaries, &c. and afterwards rendering the Estates to the right Heirs. *4 Co. 126. Stat. 17 Edward 2.*



## Majorities.

**T**He Dean and the *major Part* of the Chapter make the Chapter, and their Act is accounted the Act of the Corporation: The Consent of the *major Part* of any Corporation, shall be binding in making of By-Laws: *Commons, &c.* may make By-Laws, and the Consent of the *major Part* shall bind the rest; (but not in Case of Enclosures) And the *major Part* of *Electors* make the Election of Members to Parliament. *Stat. 19. H. 7. 8. Ed. 3.*

But the *major Part* of *Creditors* may not by any Act of theirs bind the rest; they can only bind themselves; tho' there was once a Law in Being that two thirds, in number and Value might make Compositions, and bind the others: But this is repeal'd. *Stat. W. 3.*

## Marriage.

All Persons, not prohibited by the levitical Degrees, or otherwise by God's Law, may lawfully Marry: The Son of a Father by another Wife, and the Daughter of a Mother by another Husband, *Cousin German, &c.* may Marry with each other: But they must be of the Age appointed by Law, *viz.* The Man fourteen and the Woman twelve; otherwise at that Age they may disagree to the Marriage. *Co. Lit. 33. &c.*

The Consent of the Mind is chiefly regarded in contracting of Matrimony: And if a Father or Mother promise Marriage for their Child, the Child's Silence (the hearing the same) will be adjudg'd a Consent: So that Care must be taken as to a Silence of this Nature. And if a Ring be solemnly delivered and put on the Woman's fourth Finger by the Party himself, and she willingly Accepts and wears the same, the Parties are presum'd mutually to have consented to Marriage. *Swimb. 210.*

Considerable Damages may be recovered on a Promise (in Writing) of Marriage, where a Woman afterwards refuses to Marry a Man, or a Man a Woman; because depending on such Promise they may be hindered in making their Fortunes with others. And by Marriage with a Woman, a Man is entitled to all her Estate Real and Personal; but then he is liable to the Payment of her Debts. *Co. Lin. 357.*

If a Man steals an Heiress, it is Felony. *Stat. 3. H. 7.* But if she carries him to the Place appointed for Marriage, he will not be Criminal: The Advice Serjeant Mainard gave to a young Gentleman, who privately Courted his Daughter, was that she should Ride before him; which effectually evaded this Law.

If any Persons being Married, do Marry any other Person, the former Husband or Wife, being Alive, they will be guilty of Felony: But this does not extend to any Person, whose Husband or Wife shall be absent beyond Seas seven Years, or in England seven Years continually, not knowing the other to be Living; nor where Marriages are declared Void, or made



made by Persons within Age of Consent, &c.

Stat. 1. Jac. 1.

### Merchants.

A Merchant of Holland or any other Nation buys Goods in London, and gives a Note of his Hand for Payment, and afterwards flies into Holland; the Seller of the Goods, tho' he may not here Prosecute for the same, yet on Proof of the Sale and Delivery before the Lord Mayor of London, shall have a Certificate from him, and the People of Holland will execute a Process against the Party. 4. Inst. 38.

### Mines.

If a Man make a Lease of Lands, wherein there are hidden Mines, and all the Mines, the Lessee may at his pleasure Dig for the same; but if a Man make a Lease of his Lands, in which there is a hidden Mine, but Mines are not mentioned in the Grant, he cannot Dig for such Mine. It is necessary that the Mines be mentioned as well as the Lands, to entitle the Lessee to the Profits thereof. 5. Co. 12.

Digging Mines of Metal, Coals, &c. without a particular Power by Lease, is Waste; but if a Mine be open, the Digging in it will be no Waste. And where a Lease is made of Lands with the Mines in the same, and there are Mines open, the Power of Digging will extend to them only. Co. Lit. 53.

Mines

Mines of Gold and Silver, by the Common Law, belong to the King; and only Mines of Brass, Copper, or Lead, may belong to a Subject: But a Royal Mine may by Grant of the King be sever'd from the Crown. And by Stat. 1. W. & M. No Mine of Copper, Tin, &c. shall be adjudg'd a Royal Mine, tho' Silver, &c. be extracted. See Stat. 5. W. & M.

Treasure hid in the Earth, and Coin, tho' not hidden, being found, is the King's. But Treasure found in the Sea; the Finder shall have it.

### Money.

Any Person may lawfully, cut, break, or deface Pieces of Silver Money, suspected to be Counterfeit, or diminish'd otherwise than by wearing; but if such Pieces of Money when cut or defac'd appear to be good Coin, the Defacer thereof shall stand to the Loss. Stat. 9. & 10. W. 3.

So that there is a Precaution requisite in this Case; and a Man ought to be sure the Money is Counterfeit, before he attempts to deface it.

### Mortgages.

The Interest in Law in Lands Mortgaged, is in the Mortgagee before Forfeiture; for he hath purchas'd the Lands as it were upon valuable Consideration, as the Law will intend; and tho' the Mortgagor may Redeem, yet it is not certainly known whether he will or no; and if he



he do not, the Estate without other Act is absolute in the Mortgagee. *Mich. 23. Can. B. R.*

By Payment of the Interest of the Mortgage Money, Mortgages are renew'd and continued; and till Failure is made in Payment of the Money, the Mortgagor holds the Lands. The Heir and Executors of a Mortgagor, coming within the Time limited, may pay the Money and save the Forfeiture: But if no Time be limited, and the Mortgagor doth not pay it during his Life, his Heirs, &c. shall not be receiv'd to pay the Money. *Co. Lit. 206.*

Executors shall have Money due on Mortgages where a Mortgagee in Fee dies before the Day of Payment, unless the Heir be particularly named in the Proviso: And where the Heir is named, if the Day be past 'tis as much as if no Person had been express'd; and then the Law appoints it to the Executor. *1 Inst. 210. Salk. 450.*

Persons Mortgaging Lands a second time without discovering the first Mortgage, Forfeit their Equity of Redemption; and the second Mortgagee, &c. has Power to redeem. *Stat. 4. & 5. W. & M.*

See Priority.

### Murder.

'Tis Malice makes a Murder; and if one resolves to Kill the next Man he meets; and does Kill him, this is Malice against all Mankind. A Man gives another Money to strike him, and he afterwards Kills him, it shall be adjudg'd he did it to cover his malicious Intention. In Dueling, &c. it is of no Signification who begins the Quarrel

Quarrel, (reproachful *Words* will not extenuate) and not only the Principal, who Kills his Adversary, but also the Seconds are guilty of Murder, whether they fought or not: If two or more *Assemble* to do an unlawful Act, as to beat a Man, &c. and one of them Kills a Person, this will be Murder in all. *Rel. Rep. 65, &c. H. P. C. 31, 51, &c.*

An unlawful Act *without* an ill *Intent* is Man-slaughter; and *with* an ill *intent* Murder: If one killeth another by throwing a Stone over a Wall in a place where People often Resort; or at another in Play, it is Murder if done with an evil Intention to hurt. And Throwing a Stone over a House or Wall, among a Multitude of People, knowing they were there assembled, and Death ensues, shews an evil Intention of doing Mischief, and is Murder. *Riding* an unruly Horse, into a Fair, knowing him to be so, and on purpose to do Mischief, if Death ensues, it is Murder. 3. *Inst. 57. H. P. C. 45.*

If a Man shoot off a Gun in a City or Highway, or other Place where there is usually a Resort of People, which must of Consequence put the Life of a Man upon Hazard, he is guilty of Man-slaughter. If a Man shooting at the tame Fowl of another, which is an unlawful Act, kill a Stander by, it will be Murder: If he be shooting at wild Fowl, &c. and he is not qualified to keep a Gun, it is Man-slaughter: And if he be qualified to keep a Gun, which makes the Act lawful, tis only Chancemedley. *H. P. C. 31. 58. 3. Inst. 56.*

. If a Woman's Husband Kills an *Adulterer*, taken in the Fact, tis only Man-slaughter; and Cutting of his privy Members is only Maihem:



A Woman may justify the killing a Man who attempts to Ravish her. And both Man or Woman, or any of their Servants, may lawfully Kill a Person attempting to commit Murder, Robbery, or Felony. *Kel. 137. 3. Inst. 118.*

Murder may be committed by Weapon, Poison, Crushing, Bruising, Wounding, Starving, Shooting, Smothering, Strangling, &c. but in case of wounding, Death must ensue within a Year and a Day after the Wound given. If a Man receive one, who gave a mortal Wound to another, before the Death of the Party wounded, he cannot be Accessary to the Murder; for the Fact must be Felony at the very Time he becomes accessary. In Manlaughter there can be no Accessories before the Fact, because the Offence happens on a sudden. *3. Inst. 188. 4. Rep. 44.*

Where a Murder is committed, the Coroner is to enquire *super visum Corporis*, how the Person was kill'd, by whom, the Persons present, &c. and if the Body be buried before he comes, he may cause it to be dug up, and the Vill shall be amerced, *Stat. 4. Ed. 1. Aleyn 57.*

~~For the Life of a Man, which must be proved by the Oath of twelve good Men, who shall be sworn by the Coroner, and the Jury, that the Person was killed by the Defendant, and that the Defendant was the Author of the Murder.~~

### Necessity.

Any Person, in his Defence, may Kill others for the Safety of his Life; for the Necessity of it; But Malice must not be colour'd under Pretence of Necessity. If several Persons are in danger of Drowning, by the casting away of a Ship, Boat, &c. a Man may thrust another from a Plank to save his own Life. And if a

Fire

Fire happen in a Street, a Man may justify the Pulling down a Wall or House of another Man; to prevent its Spreading; and this is because it is Necessary. Bar. Max. 25. Staundf, &c.

**Consuit.** Vide Default, Costs.

### Nusances.

If a Man hath a *Water-course* running to his House for his necessary Use, and a Tanner erects a Lime-pit so near it that the Corruption of the Lime-pit spoils the Water: If Dye-houses are erected, the Stink and Filth of which destroy Fish in a River: And where a Hedge, Gate, &c. is erected on cross a Highway; Ditches are Dug, or Logs of Timber laid therein, &c. These are Nusances. 2. Roll. Abr. 137.

The two first are of a private Nature, and Action of the Case lies for the same: To remedy the last you must proceed by Indictment.

### Outlawry.

**W**Here a Man is call'd in to the Law, and doth not appear upon three Writs issued against him, whereupon an Exigent is awarded; directed to the Sheriff to make Proclamation in five County Courts, charging him to appear, if he do not then appear he is depriv'd of the Benefit of the Law: In former Times this Outlawry was so great a Punishment in it self that any

G

Person



Persons might Kill the Offender, as a Wolf, wherever they met him; but it was then for Felonies only; and now Outlawries are become frequent in personal Actions.

The same Term the Exigent and Proclamation are sued forth, in order to Outlawry, a Warrant of Attorney must be filed for the Plaintiff, or it will be manifest Error in the Prosecution, to the great Hinderance of the Client, and Prejudice of the Attorney; who by Statute will incur a Forfeiture of 10*l*. *Comp. Attorn.* 17.

### Pardons.

BY the Common Law the King had Power to pardon all Offences; but this Power is restrained by Statutes, especially in cases of Murder.

The King cannot Pardon wilful Murder, in case an Appeal be brought; which is at the Suit of the Party and not of the King, and the Appellee is to have Judgment of Death: On Appeal of Rape, &c. it is the same. *Stat.* 3. *Ed.* 3. 2. *Inst.* 316. But the King may grant a Reprieve for a long Term of Years; or Reprieve from time to time, which amounts to a Pardon; tho' this, as it ought, is very seldom practis'd.

Partition and Parceners. Vide Heirs.

shall be recovered; to the  
 guilt you giving in evidence of  
 of a Peer which is to  
 his Discharge.

**Pawns, Pledges.**

When Goods are pawn'd, the Party that  
 Pledges the Goods hath such a general Property in  
 them, that if they are casually Lost, he must  
 bear the Loss; they cannot be forfeited by the  
 Party that hath them in Pawn, for any Offence  
 of his, nor be taken in Execution for his Debt:  
 Neither may they otherwise be put in Execution  
 till the Debt, for which they are pawn'd, is satis-  
 fied. *Lit. Rep. 332. Owen. 124.*

If a Man have Jewels in Pawn for a certain  
 sum of Money, and he that putteth them in  
 Pawn is *attainted*, the King shall not have the  
 Jewels unless he pay the Money. *Plowd. 487.*

Where Goods are pawn'd without a Day being  
 set for their Redemption, they are redeemable at  
 any time during the Life of the Borrower; but  
 where the Day is limited, it must be strictly ob-  
 serv'd.

**Peers.**

Peers, and Members of Parliament, &c. may  
 not be arrested in their Bodies, for any Debt, &c.  
 But their Estates may be sequestred, on Process of  
 Summons, original Bill, &c. when they refuse  
 to Appear, or to answer, *Stat. 12. W. 3. c. 2.*  
*Scandalum Magnatum*, may be brought by a  
 Peer or Nobleman for Slander; who Prosecutes  
 as well for the King as himself: And in these



Cases, great Damages will be recovered; so that a Man ought to be cautious in saying any thing of a Peer which affects his Honour, or tends to his Disgrace.

But a Man may justify in *Scandalum Magnatum* against a Peer setting forth the special Matter. Stat. 11. R. 2. A Peer is not put to his Oath; but his Pleadings are on his Honour.

### **Trial of Peers. Vide Trial.**

### **Physicians, &c.**

A Physician authoriz'd to Practice, through Negligence, &c. suffering a Patient to Die, shall not be question'd for his Life; and yet if a Chirurgion do only hurt a Wound, whereby the Cure is retarded, which may be prov'd, and the Patient doth not Die, Action of the Case may be brought against him. *Staundf. 16.*

+ If a Physician or Surgeon not duly authoriz'd, undertake the Cure of a Patient, and the Patient dies under their Hands, this is said to be Felony. *Fitz. Coron. 163.*

### **Pleading.**

Every special Plea must be pleaded in Bar to the Action brought, or in Abatement of the Writ, otherwise it is but a Discourse, and no Plea, because the Plaintiff cannot take Issue upon it; and therefore if the Plaintiff do Demur upon it, and his Demurrer is adjudg'd Good, he shall have

have Judgment against the Defendant for want of Plea.

The general Issues pleaded by the Defendant are, in Action of Debt *Nil Debet*; Action of the Case, Trespass, &c. *not Guilty*; and if upon Promise, that he did *not assame*, &c. If the Defendant plead *Specially* in C.B. or the Plaintiff reply *Specially*, both Plea and Replication, are to be under a Serjeant's hand; and deliver'd to the Attornies on both Sides.

If the Attorney for the Defendant, upon receiving a Declaration, do not crave that the Condition of a Bond may be entered with the Imparlance, &c. he will be debarr'd from pleading *Conditions perform'd* at any time after, without moving the Court. Where an Obligation is made to pay a sum of Money, or do such an Act, at such a Feast: It is no Plea to say that the Obligor did pay it, &c. but he must shew at *what Time*, or else it may be taken that he paid it after the Feast. *Noy Max. 15.*

In the *Common Pleas*, the Defendant is to Plead the same *Term* he appears, if the Writ be returnable at the Beginning of the Term, especially in *issuable Terms*; but in other Terms, if the Action be not laid in *London*, the Defendant has generally an *Imparlance* or Time to Plead till the next Term. *Comp. Attorn. 37.*

No *dilatory Plea* shall be receiv'd in any Court of Record unless the Truth of it be prov'd by Affidavit, or probable Matter be shewn. *Stat. 4 & 5 Ann.*

Vide Debtor and Creditor.



## Possession.

Long Possession, time out of Mind, *Bracton* tells us sufficeth for a Right: And that Measure of Time that maketh such a possessory Right, by which a Fee-simple may be attain'd, according to *Littleton*, is where things have been used so long as the Memory of Man cannot remember the Contrary; that is either by the Knowledge, and Memory of Proof, or by Record or sufficient Matter in Writing. *Co. Lit. 115.*

If all the *Witnesses* to a Deed are Dead, continual and quiet Possession, is a violent Presumption of the Legality of the Deed, and shall pass for Truth. *1. Inst. 6, &c.*

A Fine and five Years peaceable Possession, is a good Bar against Persons claiming. See *Title Fines.*

## Presumption.

In Criminal Cases, if a Man in a House be run thro' the Body with a Sword, which occasions his Death, and it is prov'd by a Witness that one was seen to come out of the House with a bloody Sword, and that no other Person was at that time in the House; this is a strong Presumption, and Circumstance, that he was Guilty of the Fact. *Co. Lit. 373.*

If Jurors find Circumstances and Presumptions to entitle the finding of Fraud, it is but Evidence and not any Matter upon which the Court may adjudge Fraud: The Jury must give their Verdict upon it, and not leave Matter of Evidence to the

the Court to Judge; for it doth not appear to them. 10. Co.

### Preservation.

If a Man in Danger of famishing, steal Victuals meerly to satisfy his *present Hunger*, it is not Felony by our ancient Books; because it is for the *Preservation of Life* only, and there is the last Necessity for it. *Staudf.*

See more, *Perempt.*

### Priority.

Debts *first due* ought to be *first satisfied*; for as a first Creditor advances his Money before his Debtor is Incumber'd, it is but reasonable he should be paid his Debt before the Discharge of the subsequent Incumbrances: A *Prior Mortgage* shall be first Paid off; and next to that a second; but if there be a third Mortgage, the Mortgagee of the last, may purchase an *Assignment* of the *first*, and add his own Mortgage to it, and by that means keep out the second Mortgagee: But this I take to be a hard Case, and a Turn very Injurious to the Persons lending their Money on the second Mortgage.

Debts *first due*, ought likewise to be first prosecuted; otherwise they will not in some Cases be first Paid.

*Privilege. Vide Peers.*



## Promises.

Promises of *Marriage*; To answer for the *Debt* or Miscarriage of *another*; To charge an *Executor* or *Administrator* to answer Damages out of his *own* Estate; and *Agreements* not to be perform'd in a Year, &c. must be made in *Writing*, and signed by the Party charg'd, to entitle an *Action*. Stat. 29. Car. 2. *Frauds and Perjuries*.

But a Man must take care how he Promises or Engages for a Stranger in Buying and Selling; or of even commending, (which may Encourage the Seller to Trust) for thereby he may in some Cases be liable to the Debt; by the Laws of Merchants.

## Property.

A Person who by *Contract* is to make another Possessor of any Thing, is to be *Proprietor* of the Thing it self, or his *Contract* shall be void. If a Man possess'd of a Horse, sell the same upon Condition to another that he pay him; for it at a certain Feast; but before the Feast, sells the Horse to a third Person; and after the Feast, the first Buyer fails of Payment, whereupon a *Refeisure* is made of the Horse; In this Case, the second Buyer shall not have the same, because at the Time of the second *Contract* the Seller had neither Interest, Property, nor Possession of the Horse, but only Conditional; which is not sufficient. *Plowd.* 422.

The Property of a Horse, &c. Sold by a Bargain and *Contract* is in the Buyer immediately; but

but the Seller may keep the *Horse* till he is paid for the same; tho' he cannot prosecute for his Money 'till Delivery of the *Horse* to the Buyer, unless the *Horse* die between the Contract and Delivery. *Noy 88.*

**Property in Lands.** See Grants, &c.

### **Purchases.**

Sometimes Persons, who have Occasion to sell an Estate, (as it is rated at so many Years Purchase, according to the Rent) to augment the Price of it, make a Lease for a Short Term of Years, at a *Larger Rent* than Usual, and at the same Time privately give Bond to allow the Tenant so much *per Annum* out of it; of which the Purchaser being Ignorant, he Pays at the Rate of the Rent mention'd in the Lease, perhaps five Pounds a Year in Twenty more than the Land is worth. To avoid this, it is Necessary to insist upon a Lease of the Premises for a *Long Term*, at the yearly *Value* it is Rated on the Purchase; or that the Seller be obliged to make *Affidavit* that the Estate has been, *bona fide*, Let at the same Rate for Twenty Years past before the Sale.

*Affidavits* are Necessary, that Estates are free from Incumbrances, on making Purchases, Mortgages, &c.

**Rape.**



## Rape.

**T**HIS is an Offence committed on a Woman's Body, *against her Will*; and if the Female be under ten Years old, if the Fact be committed either with or against her Consent, it is Felony: But *Penetration* and *Emission* must be prov'd, otherwise 'twill be only Assault and Battery. *Stat. 18 Eliz. 3. Inst. 60.*

If a Woman yields thro' Force, it is *against her Consent*; and if she consent after the Fact, it is still a Rape. And a common Strumpet is under the Protection of the Law, and may be forc'd; but some Consideration will be had in these Cases, especially by Juries, in Favour of the prosecuted. *Dalt. 103.*

A married Woman may bring *Appeal* of Rape; if she will not Prosecute, the Husband may; the Father, or next of Kin, may also have Appeal; and the Offender may be attainted at the Suit of the King, where the Woman Consents afterwards. *3 Inst. 131. Cro. Car. 332.*

## Reason.

Reason, my Lord Coke tells us, is the very *Life and Soul* of the Law; that it may be alledg'd where

where it is wanting, and what is *contrary* to it is *unlawful*. And where Maxims of the Law admit of any Difference, those are to be preferred which carry with them the more perfect and excellent Reason. *Co. Lit.* 97. 183.

Where the Reason of the Law once ceases, the Law it self generally ceases; because Reason is the *Foundation* of all our Laws.

### Releases.

As to Lands, a Release of a Man's *Right* in Fee-Simple, is not sufficient to pass a Fee-Simple; but a Release to a Man and his Heirs, will pass as a Fee-Simple. By Release of all a Man's Right to Lands, all Actions, Entries, &c. are discharg'd; and a Release of Entries, or Right of Entry, bars all Power of Entry, &c. but in neither of these Cases it will not bar a Man of a *Right* that shall descend to him *afterwards*; and if a Man have a double Remedy, *viz.* a Right of Entry, and an Action to Recover, and then Release all Entries, by this he is not barred of his Action. *Co. Lit.* 273, 345. *Plowd.* 484.

Debts, Legacies, &c. may be releas'd and discharg'd before or after they become due. A Release of all *Debts*, Discharges all Debts, &c. A Release of all *Covenants*, Discharges all Covenants, broken or not broken; a Release of all *Duties*, Discharges all Actions, Judgments, Executions, &c. and a Release of all *Demands*, releases all Rights and Titles to Lands, Warranties, Conditions, Statutes, Obligations, Contracts, Covenants, Debts, Duties, Judgments, &c. all manner



manner of Actions, Real and Personal: But it will not avoid an *Obligation subsequent* to the Release, or a Promise that is future; and if a Release of all Demands be made on a particular Occasion, in such Case, it may restrain the Generality of the Words. *Co. Lit. 291. Dyer 56.*

A Release of *one Obligor* will discharge the *others*; and if a Promise be of two Parts, a Release of one Part will Discharge the other Part,

### Representation.

Executors do more represent the Person of the Testator than the Heir doth the Ancestor, by reason of their Charge; for tho' an Executor be *not named* in a Mortgage, yet the Law appoints him to receive the Money; but the Law doth not appoint the Heir to receive the Money unless he be named. *Co. Lit. 209.*

Representatives of crown'd Heads, and Ministers of Justice, are to be treated in some Measure as those they represent.

**Repugnancy.** Vide Feoffment.

### Reservation.

A Lessor may reserve to himself any Thing but the *Profits* of the Land; the Profits he may not Reserve, because they are the *Thing it self*, and the Land is nothing without the Profits; wherefore a Condition to restrain a Grantee from

from taking the Profits is Repugnant and Void,  
1 Inst. 206

A Landlord may not *Enter* upon the Lands of his Tenant to *cut Timber, &c.* unless he has reser'd to himself the Liberty of doing it; tho' he can come on the Lands to view Waste, &c.

### Revocation.

Letters of Attorney, and other *Authorities* may be *revoked* by the Persons giving the Powers; and Submissions by Bond to Awards, may be *countersigned* by Deed; but then the Bond will be forfeited; so that 'tis good to have Bonds in sufficient Penalties in these Cases. A Power of Revocation in a *Deed of Uses*, is revok'd by a new Declaration of Uses, or by Will, &c. without particularly mentioning the Revocation: And if there be a Proviso that a Use may be revok'd by Indorsement; this will not confine it to Indorsement only, *Reb. 134.8 Rep. 82.*

### Robbery.

A Thief, either with or without a Weapon drawn, bids a Person on the Highway *deliver his Purse*, and he delivers it accordingly, this is Robbery; and if a Man with a Sword or Pistol drawn, bids another deliver his Purse, tho' he afterwards prays him to give *Alms*, it will be Robbery. A Man pursued *lets fall his Hat* or his Money, and the Thief *takes it up*, is a taking from



from the Person. And if a Thief having cut a Man's Pocket whereby it falls to the Ground, takes up the same, this is a taking from the Person and Robbery. *H. P. C. 71. Dalt. 363.*

If any Thing be taken from the Person on the Highway without putting in Fear, it is not Robbery but Felony, for which the Offender shall have Clergy: The Value taken is not material, for if it be but one Penny it is Robbery; but something must be taken, otherwise 'twill be only a Misdemeanour, punishable by Fine, Imprisonment, Pillory, &c. *2 Inst. 69. &c.*

Where Robberies are committed on the Highway in the Day time, of any Day except Sunday, the Hundred is chargeable. *Stat. 27 Eliz.*

### Self-Injuries.

If a Man kills himself, it is called *Felo de se*, or Felony on himself, and incurs a Forfeiture of Goods, &c. but Lunaticks are exempt from this Forfeiture; and Persons in these Cases, are generally brought in *non compos Mentis*, to save their Estates.

As a Man may not kill, so he may not wound himself. A lusty young Fellow who caus'd his Companion to cut off his Hand to qualify him for Begging, was indicted with his Companion and fined. *Co. Lit. 127.*

### Sequest

Sequestrations.

If a Defendant in Execution be a *Clergyman*, instead of a *Fieri Facias*, or *Capias ad Satisfaciendum*, &c. a Writ commonly goes to the Bishop, who thereupon sends forth a *Sequestration* of the Profit of the Benefice, directed to the Churchwardens, &c.

And where a *Suit* is depending relating to Profits of a Parsonage, which of two Persons instituted is rightful Incumbent, &c. the Ecclesiastical Judge usually Decrees that the *Fruits* of the Church shall be *sequestered* and collected by the Churchwardens; and after the *Suit* is determin'd, the *Sequestration* is to be taken off, and the Profits collected restored to him that prevails at Law.

**Servants.** See *Authorities, Covenant, &c.*

Simony.

The Statute 31 *Eliz.* Enacts, That if any Person shall at any Time, for any Sum of Money, Gift, Reward, &c. or by Reason of any Promise, Bond, Covenant, &c. for any Sum of Money, Present any Person to any Benefice with Cure, or Living Ecclesiastical; or give the same in respect of any such Cause; every such Presentation, and every Admission thereupon, shall be void; and the Crown shall Present for that Turn. The Persons taking the Money, shall also forfeit double the Value of one Year's Profit of the Benefice, and the Person seeking the Bene-



Benefice, be disabled thenceforth to enjoy the same.

This is what the Law calls Simony; tho' this Law has been evaded by *Bonds of Resignation* enter'd into to the Patrons; whereby such Patrons have it in their Power to make Sure to themselves a Recompence for their Preferments, for on Failure thereof, they may put the Bonds in Suit. But these Bonds have been adjudg'd void as Simoniackal. 2 Cro. 274.

It is lawful for any Person to buy the next Turn of a Church, when it is full of an Incumbent, unless the Parson in Being be sick in his Bed ready to die, &c. But if a Man grants a next Presentation for a Sum of Money, to be paid when the Church becomes void, this will be Simony. Hob. 105.

### Slander.

For Words which occasion a particular Damage, viz. which affect a Man's Life, Office, Trade, &c. tend to loss of Preferment in Marriage, Service, &c. or to a Man's Disinheritance, Action of Slander may be brought: To call a Merchant Bankrupt; say of an Attorney he deals corruptly; call a Man false Justice of Peace; call an Heir Barrard; say of a Man that Courts a Woman he has the French Disease; call another perjur'd Person, &c. are Slanders which concern the Estate, Condition, and Life of a Man. 14 Co. 15.

And to Reproach another with a Heinous Crime, as that he lay in wait to rob or murder any Person, is likewise a notorious Slander; but Words of Heat, as where a Man in a Passion calls

calls another Rogue, Knave, or Villain, unless he say Rogue in such an Affair, or Villain to such a Man, &c. will bear no Action.

And if a Man charge another that he hath *forsworn* himself, it may be construed he hath forsworn himself in common Conversation, and not in a Court of Record. 4 Co. 13.

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### Tenants.

**T**ENANTS *for Life*, may take upon the Lands demised, reasonable Estovers. And if Tenant for Life *sows* the Land, and die before the Corn is reaped, his Executors shall have the Profits of the Land, by reason his Estate was uncertain, and determin'd by the Act of God; and where any one hath an uncertain Estate, as Tenant in Tail after Possibility of Issue extinct, Tenant by Curtesy, &c. the Case is the same: (Tho' Grass, or Fruits, must be sever'd, because they are Parcel of the Inheritance) But if Tenant *for Years* do Sow the Land, and his Term expires before the Corn is Ripe, the Landlord shall have it; unless it is covenanted between them, that the Tenant shall have his Crop at the End of his Term; for here the Term is certain, and it shall be adjudg'd his Folly to Sow the Ground when he knew his Term would end before the Corn was Ripe. 1 Inst. 55. 68.

If Lessee *at Will* Sow the Land, he shall Reap his Crop of Corn, tho' he be ejected by his Landlord before it is Ripe: He shall have free Entry Egress and Regress to cut and carry away the same;

H

and



and if he be disturb'd therein, he may bring an Action on the Case, and recover Damages; but if the Lessee himself determines his Will, it will be otherwise: And if a Woman Copyholder, that holds Lands for her Widowhood, Sow the Ground, and take Husband, the Landlord shall have the Profits; because the Estate was determin'd by her own Act. *Co. Lit.* 55, 56.

A Tenant for *Half a Year*, or a *Quarter* of a Year, is said to be Tenant for Years; and where a Man holds an Estate for his Life, he may Lease it, reserving the Rent payable *Quarterly*, or *Monthly*, &c. to secure the Rent to the Time of his Death, as near as may be.

See Lease, Waste, Construction, &c.

### Tithes.

Tithes are to be paid but once in the Year; unless it be by particular Custom; (so that if Lands produce two Crops in a Year, the Parson shall not have Tithe of both, except there be a Custom justifying his Demand) The Manner of payment of Tithes, is for the most part govern'd by Custom; the Customs of Parishes generally determine what are the Dues of the Parson, especially of *small Tithes*; but as to Corn the Statutes take Place. If a Parishioner Sows his Land, and before Severance of the Corn, the Parson dies, the Successor is entitled to the Tithes; but if the Corn is cut down, the Parson's Executors shall have the Tithes. 1 Cro.

If a Parson Sows his Glebe and dies, the Executor shall have the Corn sown by the Testator; but he shall pay Tithe to the Successor. And if a Par-

a Parson sows his Land, and sells the Corn growing, the Buyer shall pay the Tithes of it to the Parson. 1 Roll. Abr. 655.

Tithes are not paid for *Beasts* of the *Plough*, or for Things *Ferae Naturæ*, &c. Tithes under 40 s. are *Recoverable* on Complaint to two Justices of Peace, &c.

### Treason.

Not only compassing the Death of the King, Queen, or Prince; Deflowring the King's Wife, or his eldest Daughter, or his eldest Son's Wife; Levying War against the King; Adhering to his Enemies; Counterfeiting the King's Seals, or Money, &c. are Treason; But for a Man to say he will be King *after the King's Death*; and to Prophecy when the King shall die, have been adjudg'd Treason; for these may imply Knowledge of a Conspiracy. Roll. Rep. 88.

If any Person shall be guilty of any *open Act* shewing a Design to depose the King; provide Arms to kill him, &c. these are a sufficient Declaration of compassing or imagining the Death of the King: And *Taking up Arms* to dethrone the King, to reform Religion or the Laws, to remove Persons from the Ministry, resist the King's Forces, or do any Thing else *for publick Reformation*, is a Levying of War, and Treason. 3 Inst. 9.

Where a Man knoweth of any Treason, and *conceals* the same, it is only *Misprision* of Treason; but it must be a bare Knowledge only, for if he *Consents* to the Treason, he is a *Traitor*; and in Treason there are no Accessaries.



One that is only told in general, that there will be a *Rebellion* without knowing the Persons concern'd in it, or the Place where, &c. may conceal it; but a Man must not go into the Company of Conspirators. 3 *Inst.* 138.

Declaring the King is *not lawful King*, &c. or hindring any Person next in Succession, from coming to the Crown, is High Treason by late Statutes.

### Petit Treason.

If a Servant killeth his Master; a Wife her Husband; or a Religious Man kills his Prelate or Superior; these are petit Treason; which is, where one, out of Malice, takes away the *Life* of a *Subject*, to whom he owes special *Obedience*, *Stat.* 25. *Ed.* 3.

If a *Wife* or Servant procure a Stranger to *Kill* the Husband or Master, in the *Absence* of such Wife or Servant, neither the Procurer or Actor are Guilty of Petit Treason, but of Murder only: But if the Wife or Servant be either actually *present*, or present in Judgment of Law, as being in the same House, when the Crime is committed they will be guilty of Petit Treason, and the Stranger of Murder. *Moor* 91. *Dyer* 128.

A Wife and her Servant Conspire to Kill the Husband; tho' the Wife be absent when the Servant Kills him, both will be guilty of Petit Treason. *Dyer, ibid.*

Trial.

Trial.

Persons committed to Prison for Capital Crimes, as *Treason, Felony, &c.* express'd in the Warrant, upon Prayer in open Court the first Week of the Term, or Day of the Sessions, are to be *brought to Trial*: If they are *not indicted* the next Term or Sessions, upon Motion the last Day of the Term, they are to be admitted to *Bail*, unless the King's Witnesses are not ready; and if they are *not tried* the second Term, &c. they shall be *discharg'd*. Stat. 31. Car. 2.

A Peer is to be *tried by his Peers* (but they are not sworn upon the Trial) and he cannot Challenge any of his Peers: This is where a Peer is tried at the Suit of the King, upon an Indictment for *Treason, Murder, or other Felony*; and in this Case he may not wave his Trial by his Peers, and be tried by the Country: In *Appeal of Felony, &c.* at the Suit of the Party, he shall be tried by *Freeholders*; and so shall one that is Noble, in other Cases, if he be not a Lord of Parliament, such as a Lord of *Ireland*, Son of a Duke, Earl &c. 1. Inst. 156. 3. Inst. 26.

If two of the King's Subjects fight in another Kingdom, and one of them is *Kill'd*, it cannot be Tryed by the Common Law; but it may be determin'd by the *Constable and Marshal* according to the Civil Law: Or the Fact may be examined by the *Privy Council*, and tried by *Commissioners* appointed by the King, in any County of *England*. Stat. 33. H. 8. 3. Inst. 48.

In *Civil Causes*, in B. R. eight Days Notice must be given of Trial in *London and Middlesex*, unless the Defendant live above forty Miles from



*London*; and eight Days Notice of Trial at Affizes is good, let the Defendant live where he will. On this Notice the Defendant must proceed to Trial, or Judgment will pass by Default: And if a Plaintiff forbears to bring his Cause to Trial, or he will not try his Issue after it is join'd, in such Time as he ought by Course of the Court, the Defendant may take a *Venire Facias* directed to the Jury to try the Cause by *Proviso*; that he may free himself from Danger and Trouble, and recover Costs for unjust Vexation. *Comp. Attorn.* 324.

In Matters of great Weight, or where the Title in Question is intricate, the Judges above, upon Motion, will order a *Trial at Bar*; and then the Juries and Witnesses must come to the Courts at *Westminster*. And where Excessive Damages are given by a Verdict, or the Verdict be given against Evidence, &c. the Judge may order a new Trial. *1 Inst.* 227.

See more of Trial, Indictments,  
Witnesses, &c.

### Verdicts.

**I**F a Jury give a *false Verdict* in any Court of Record, either in a Real or Personal Action, where the Debt or Damage is above 40 s. they may be punish'd by *Attaint*: If a Jurymen shall withdraw from his Fellows, or keep them from giving their Verdict without giving any Reason, he

he shall be fined ; but if he *differ* from them in Judgment he shall not be fined. *Dyer* 53.

*All* the Jurymen are to *agree* to their Verdict ; and in Cases of Life or Limb, if the Jury cannot agree of their Verdict at the Assizes, they must be *carried* the *Circuit* till they do agree. *1 Vent.* 97.

The Verdict in *Capital* Cases must be given *openly* in Court, and not as a *privy* Verdict : In *Civil* Cases, a *privy* Verdict may be given out of the Court before one of the Judges ; but it is to be affirm'd in Court ; and the Jury may vary from their private Verdict, by Verdict in open Court. *1 Inst.* 226.

When a *general* Verdict is given, it is either in the Affirmative or Negative ; as Guilty, or not Guilty, &c. and *special* Verdict is where the Jury find the special Matter or the Fact at large, and being doubtful, leave it to the Judges to determine what is the Law arising from the Fact. And in Cases of Difficulty, sometimes the Twelve Judges are consulted in the Determining of a special Verdict. *Co. Lit.* 227.

Stealing Goods to the Value of 12 *d.* is Grand Larceny, for which a Man may be Hang'd ; but a *Jury* may find the Goods stoln of *less* Value than 12 *d.* and so convict the Prisoner of Petit Larceny only ; whereby the Punishment is only Whipping. And this may be done though the Man be indicted for stealing Goods of the Value of 30 or 40 *s.* *Hetley's Rep* 66.

Upon Return of Verdicts (in Civil Cases) given at the Assizes to the Court above, the Judges there give *Judgment* for the Party for whom the Verdict is found. But if a Verdict be *Ambiguous*, it is insufficient, and no Judgment shall pass.



If Jurors *eat or Drink* at the Cost of him for whom they shall give their Verdict, before they are agreed; or if they *cast Lots* whether they shall find for the Plaintiff or Defendant, &c. the Verdict may be *set aside*.

### Violence.

All Violence is *unlawful*; and if a Man Assault another with an Intention of beating him only, and he dieth, it is Felony. If a Father, Master, or Schoolmaster, *correct* a Child, Servant, or Scholar, with Things *not fit* for Correction, and Death ensues, it is Murder. And if a Man knocks another in the Head who is breaking his Hedges, &c. this will be Murder, because it is a *violent Act* beyond the Provocation. *Kel. Rep. 64, 131.*

### Uses.

Limitation of Uses made by Writing, by *other* Limitation of Uses made in Writing may be *avoided*. A Man seised of Manors, Covenants to stand seised to the Use of himself for Life, Remainder in Tail to *A.* his Daughter, &c. with Proviso empowering him by Indenture to limit the Uses to any other; and afterwards he Covenants to stand seised to the Use of himself, and a second Wife, &c. tho' there be no express Signification of his Purpose to determine the former Uses, yet this last Indenture shall be good, and the former Uses shall cease. *10 Co. 144.*

Inden-

Indentures made for declaring the *Uses* of a subsequent *Fine* or *Recovery*, are only Directory, and do not bind the Estate or Interest of the Land. 5 Co. 26.

### Warranty.

**W**arranties made by *Tenant* for *Life*, descending on him in the Reversion or Remainder; and all Collateral Warranties by any Ancestor, who has no Estate of Inheritance in Possession in the Lands, shall be void against the Heir. Stat. 4 & 5 Ann.

See more, Heirs.

### Waste.

To suffer Houses to Decay; cut down Timber Trees, (whether Oak, Ash, or Elm, &c.) Plough Lands that have not been plough'd Time out of Mind; dig Quarries of Stone, Gravel, or any Thing enclos'd in the Earth, without an express Covenant for it, are Waste. But if an House be destroy'd by Tempest, Thunder, and Lightning, Floods, Enemies, &c. without any Possibility of the Lessee's preventing the same; or if a Tenant cut Trees for *Reparation* of Houses only, &c. these are not Waste. 1 Inst. 53.

The Taking away or Breaking down of *Wainscot*, *Doors*, *Windows*, *Benches*, &c. fixed to the Freehold, is Waste: But if they are fix'd by the Lessee,



Lessee, they may be taken down by such Lessee *before the End of the Term*; so as he do not thereby weaken the Freehold, but leave the same in as good Condition as it was at the Time he fix'd them. *Salk. Rep. 368.*

Action of Waste is maintainable against Tenant by the Curtesy, in Dower, for Life, or Years; and treble Damages are Recoverable, *Stat. 6. Ed. 1.*

### Wills.

Wills were ordain'd by the Statute 32 H. 8. And by the Statute 29 Car. 2. for Prevention of Frauds, all *Devises of Lands*, or Tenements, are to be made *in Writing*, and sign'd by the Devisor, in the Presence of three credible *Witnesses*; No Devise in Writing shall be revok'd but by some other Will in Writing; or by cancelling the same by the Testator himself, &c. And Nuncupative Wills (*viz.* by word of Mouth only) tho' they are good for the Disposition of Chattels, if the same exceed the Value of 30 *l.* they must be made in the Presence of three Witnesses, &c.

A Testament written by a Man himself, tho' *not signed and sealed*, prov'd to be his Writing has been adjudg'd good; for such Will is said to approve it self: But it must be written in some Order, and not be a scribbled Paper: And it has been held that if one *by Letter* express his Will for the Disposal of his Lands, it is sufficient; the Case of a Gentleman beyond Sea; but both of these, I take it, were adjudg'd before the Statute. 29 Car. 2.

If a Man devises that *A. B. shall be Heir* of all his Land, and the Devisor have Fee, the Devisee shall have Fee; for this Devise carries such Estate to *A. B.* as the Devisor had. A Devise to a Man *imperpetuum* is a good Devise; but in a Grant it would be but for Life, for want of the Word Heirs: for Wills by Construction of Law, may have different Operations to other Deeds. *Co. Lit. 25, &c.*

A Condition in a Will is a Thing odious in Law; and Devises, upon Condition that a Man or Woman do not marry any Person, &c. the Condition is unlawful and void: And where Wills tend to *Disinherit* an Heir, the Words must be strong, clear and apparent, or they will not be allow'd. *Mod. Ca. 106.*

A Man can make but one Testament to take Effect; and the last Will shall stand in Force; but he may make as many Codicils as he pleases. A Devise must be of Lands in Fee-Simple, or Chattels; for entail'd Lands may not be Devise'd: And if a Man Devises Lands in Fee, or for Life, the Devisee may Enter without any appointment: But in case of Goods, they must be taken by the Assent and Appointment of the Executor. *Co. Lit. 111.*

A Man makes his Will, and thereby Devises that his two Executors shall sell Lands, and one of them dies, the Survivor hath not Power to sell it; but if he had devised his Lands to his Executors to be Sold, the Survivor shall sell it. *Co. Lit. 181.*

In a Will of Goods there must be an Executor named; but of Lands it is otherwise, because an Executor has nothing to do with the Freehold.

Wit=



## Witnesses.

Witnesses cannot testify a *Negative* ; but only an *Affirmative*. To a Jury, *one* Witness may be sufficient ; but in criminal Cases, for *Treason*, there must be *two* Witnesses produc'd Face to Face 3 *Inst.* 163, &c.

In *Robbery* on the Highway, *Rape*, &c. every Man or Woman may be a *Witness* in their own *Cause* ; because Crimes of this Nature may admit of no other Proof : But Regard is to be had to the *Reputation* and *Circumstances* of the Persons Prosecuting ; which when bad, may invalidate their *Testimony*, 3 *Co.* 37.

In *Chancery* as well Plaintiff as Defendant, *after* Answer put in, until Publication is past, may *Examine* what *Witnesses* they please in Court, before one of the *Examiners* ; but *before* Answer, and *after* Publication, *no* Examination will be allow'd but by special Order, on special Cause being shewn.

If a Witness be not able to Travel, a Judge may Excuse his Non-appearance, and certify his Examination. 3 *Inst.*

## Writs.

Four Persons may be included in one *Writ*, but there must be *several Warrants* from the Sheriff for Execution. Until a Defendant is arrested, *Writs* may be *renew'd* every Term : But if the *Latitat* remain unrenewed five Terms, after taken out in *B. R.* you must have a new *Latitat*, for the old one cannot then be *renew'd*.

It

It is very unsafe to keep *Writs unfiled*, (the Filing them being the substantial Warranty for the Proceedings) and lest a *Carveat* be obtain'd from some Judge in that behalf, which is call'd *Ne recipiatur*. And for not filing your Writs, the Term they are returnable; you pay when you File them a *Post terminum* for every Writ, every Term. *Comp. Attorn.*

*Variance* between the Additions, or Sums, &c. in the Writs, and the Declaration, will *abate* the Writ.



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WARRANTY,





AN  
ESSAY  
ON THE  
AMENDMENT  
AND  
REDUCTION,  
OF THE  
LAWS  
OF  
ENGLAND

By Sir John Eardley  
Carter, Bart. of the Middle Temple,  
Esq. Barrister at Law.

Printed by J. DODD, at the  
Printers Office, in Pall Mall.  
1754.



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For the Ease of the Subject,  
the Advancement of Justice, and Re-  
gulating the Profession of the LAW.

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In the SAVOY:

Printed by E. and R. NUTT, and R. GOSLING  
(Assigns of *Edward Sayer, Esq;*) for Tho.  
Cobbett at *Addison's Head* without *Temple-*  
*Bar*, 1724.

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AN  
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ENGLAND.

For the Use of the Subject,  
the Advancement of Justice, and the  
enlarging the Protection of the Law.

In the 2<sup>d</sup> Vol.  
Printed by A. and R. Millar, and R. Gosling,  
(Printers of the House of Commons,) in the  
City of London, at the Sign of the Crown, in St. Paul's Church-yard.  
1764.

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A N  
E S S A Y  
O N T H E  
*Amendment and Reduction*  
O F T H E  
L a w s o f E N G L A N D.

**T**HE Laws of *England*, particularly the Statute Laws, may be defin'd to be a Contract between the King and the People, laying an Obligation for the Performance of such Things as are Necessary for the Good of the Publick, and Restraining such Actions as are Destructive to Society. I call them a Contract between the King and the People, because the *Obligation is on both Sides*, tho' least on the Part of the Ruling Power: Our King is a Party in the Legislature; and the Commons in Parliament (our Representatives) not only propose, but agree to our Laws; so that they are, as it were, our own Act and



Deed entered into with the King, who is to observe them on his Part, as well as his Subjects.

— And so just are our Laws, that as to Capital Offences, they are, either in the *Letter* or *Consequence*, warranted by the Divine Institutions: This I can prove by several Examples: For Instance, to take away a Woman entitl'd to Lands, or that is Heir apparent, and to Marry or Defile her, is by the Law of *England* an Offence that is Capital: Now this, by the Laws of God, is not particularly mentioned to be a Capital Crime; and yet in Consequence it is such, being nothing less than manifest *Theft* (of the Woman, her Substance, &c.) which by the Divine Ordinances is strictly prohibited. The Falsifying of Money is not punishable by the Laws of God: But, as the Persons who innocently receive the falsified Coin, at the Price of Money that is lawful, are in Effect Robb'd of what it falls short of the intrinsic Value, this Crime, in Consequence, is also Theft. To acknowledge a Judgment in the Name of another, who is not privy to it, is made Felony by Statute; and this in Consequence comes within God's Law, as by Crimes of this kind you may be unjustly depriv'd of your Estate and Fortune.

Many other Examples might be brought, to prove that the Laws of *England* in general, tho' not in all Cases expressly comprehended in the Laws of God, with respect to Capital Offences, are not Contrary to them: But notwithstanding this, I believe it must be confess'd that some of our Statutes, are in some sense Defective, or so far Perverted generally speaking, by those who have the Practice and Exercise of them, that for an Essay on their *Amendment* there seems

seems to need no Apology: And as to their *Reduction*, I may reasonably expect the Concurrence of most Persons of Sense in the Kingdom, not interested in the Perplexity they Introduce, as to Determinations in our Courts of Judicature.

I shall therefore venture to Communicate my few Observations, the Result of some Study and Labour, and risque their Reception; for be that as it will, I shall thus far stand justified, that what I have mentioned is grounded upon Reason, upon Morality, and Justice, and Equity, and Convincing that my Inclinations run with my Country's Good; and rather than not point out what I think is effectually Conducive to that End, I would hazard the Displeasure of the great Profession to which I have been bred.

Happy is that Man, or that set of Men, who can bring to Perfection what I Propose, especially as to the Reduction of our Laws. He, or they, would undoubtedly Acquire, and Deserve from the People Immortal Reputation. But I do not aspire after that Fame which I am Conscious is not my Due: Though my Satisfaction would be exceedingly Great, if by any Performance of mine, I could give a *Hint* only to some Person of greater Genius and Abilities, whereby so Commendable and Useful a Work might be accomplish'd and transmitted to Posterity.

This I presume might be done without Offering that Injury to the Profession of the Law some Persons may Insinuate. And to keep the Reader no longer in Suspence in an Introduction, which may be thought Superfluous, I shall proceed to my Business in Hand: And first, *The*



*Amendment of the Laws of England; which I shall Treat of under the following Heads.*

The Age of Persons to serve in Publick Employments.

Blasphemy, ought to be severely Punished.

Chastity, should in all Cases be protected.

In Rapes, there ought to be a Distinction of Punishment.

Sodomy, how formerly Punish'd.

Sacrilege, to be punished beyond Theft.

Perjury, its Punishment should be adequate to the Crime.

Drury, a great Offence, and ought to be Capital.

Parliament Men, by whom fit to be Elected.

Penal Laws, how far Defective.

Informers, should be Esteem'd, instead of being Despised.

Justice, ought not to be Delay'd; nor Offices, Fees, &c. extraordinary allowed.

Judgment, Justice, &c. how Administered.

Plaints, Trials, Juries, &c. should not be too much Encouraged.

Prodigals ought to be taken notice of by our Laws.

Husband and Wife have too great Privileges by Marriage.

Usury, to be further Restrain'd.

Imprisonment, for what Design'd.

Treason, and its Punishment, &c.

These

These are the Heads, or particular Subjects, I purpose to Handle in the First Part of my *Essay*; wherein, I shall make it my Business to prove to the Reader the *Necessity of*, and *Reason for*, the Alterations and Amendments I propose.

---

### Of the Age of Persons, to serve in Publick Employments.

BY the Civil Institutions of the Emperor *Justinian*, it is Ordained, that no Person shall be Capable of any Office of Trust, or Publick Employment, before he is arrived to the Age of 25 Years.

This Ordinance, is so Excellent in its Nature, that amongst other Occurrences, it brings to my Memory a Reflection I have often made, with regard to our Laws on this Head; which determine, that Twenty one is the compleat Age of a Man, not only to dispatch his own Private Affairs, but also those of the Publick, how Important soever; which I take to be a Defect in our Laws: There ought to be a *Distinction* made as to the Government and Oeconomy of a Man's Family, and the Business of a Kingdom; between which there is so great a Difference as not to admit of a Comparison.

As a Man's Strength of Body is Encreasing 'till he arrives to his Thirtieth or Fortieth Year, so is his Mind and Understanding; and 'till there's a full Maturity of Sense and Discretion, I think no one ought to be admitted to a Post



of Importance. In my Opinion, no Person whatsoever should sit in the Senate before the Age of Twenty five, nor be instituted in Episcopal Dignity before the Age of Thirty five, (though Twenty one, and Thirty, are the Ages appointed by Law) for notwithstanding some Persons may be Able, at the Ages of Twenty one, and Thirty, to execute Offices of Trust in Church and State; yet in General, the Knowledge and Wisdom of Men cannot be suppos'd at those Ages to be so Ripe and Perfect, as to render them of Ability to do their God, their King, and their Country that Service, which when further advanc'd in Years may be expected from them.

For this Reason, I should be very well pleas'd to have Twenty five the fix'd and Determinate Age for a Member of the House of Commons to sit in Parliament; and Thirty five at least, the Age of a Dignitary of the Church of England.

### Blasphemy, ought to be severely Punished.

THE only Punishment attendant on Blasphemy, by the Canon Law, is a solemn Penance: This Punishment, the Spiritual Courts, in this Kingdom, have Power to inflict, and no other. And a Temporal Law made in the Reign of King *William*, Enacts, that if any Person educated in the Christian Religion, shall by Writing, Speaking, &c. be Guilty of Blasphemy, by Denying any one of the Persons

sons in the Trinity to be God ; asserting that there are more Gods than one, &c. he shall be liable to a Disability of serving in any Office, or Employment : And on Conviction of a second Offence, be rendered Incapable to prosecute any Action, to be Executor, or Guardian to any Person, and suffer Imprisonment for three Years.

These Punishments, the only ones in being with us, are very much *Inferior* to this Great and Heinous Offence ; which was so Odious amongst the ancient Romans, that they have observ'd, with a Concern becoming them, that for Crimes of this kind the World has been visited with Plagues, Pestilence, and the most fatal Calamities. Wherefore, by the Civil Law, Blasphemy, either by detracting from God that which is his Due, or by attributing to him that which is not agreeable to his Nature, is punished with Death.

This Punishment, inflicted by the Civil Law, is agreeable to the Divine Law, in the Book of *Leviticus* ; though by Custom, either a Pecuniary or Corporal Punishment has been sometimes inflicted, and not Death : But I think this Offence, as well by the Laws of *England*, as all other Laws, ought, when committed in the *Highest Degree*, to be in some measure Capital, to deter a Profane and Disolute People, from Affronting that Power to which all Things are Subject.

Chastity,



### Chastity, should in all Cases be protected.

**I**N one of the Branches of the Civil Law we Read, that a bare Attempt on a Woman's Chastity is liable to Punishment; and this is highly requisite in all civiliz'd Kingdoms and Countries. A Lifting up of the Hand in Anger is taken to be an Assault in Law; and should an Attempt on that Part of a Woman, which ought in a particular Manner to be protected from Violence, not be Punishable? By the Law of God it is declared a Sin to lust after a Woman, even in Thought; and so much more is it Criminal, to attempt to practice what such Thoughts have viciously conceived.

Indeed, our Laws inflict a Punishment where open Violence is committed on Women, as it is a Breach of the Peace: But there are other Attempts of another kind, that our Laws take no Notice of, such as Presents, Entertainments, Flattery, &c. generally more Prevalent than Attempts of Violence: And this is so far punished by the Canon Laws Abroad, that if any Person Deludes a Virgin, he shall be obliged either to marry her, or to make her Compensation for the Injury he is suppos'd to have done her.

If Attempts on the Chastity of Women, of all Kinds, were punished by our Laws, it would certainly be Commendable; for a Woman's Consent may be oftentimes too easily work'd up by favourable Opportunities, and the Frail-

ty of Nature: But the Man, who is presumed to have superior Understanding, ought to be restrained by some Law of Severity, in all Cases where the Welfare of Society, and Particularly many *Families*, is nearly concern'd.

---

### Of Rape, there ought to be a Distinction of Punishments.

I would not have the Reader imagine, that I am here endeavouring to be an Advocate for Vice (after I have shewn my self an Enemy to it, under the preceding Head) when I tell him, that, by some of our ancient Writers, it is construed an *Abuse* in our Laws, that Rape is a Mortal Offence: Or at least, that it extends to others than Virgins.

Rape, by the Civil Law, is relative to Virgins and Widows only: By our Laws it extends to Women that are married, as well as to Virgins and Widows. But I think there ought to be a Difference in the Punishment. It is unquestionably a greater Offence to commit Force on a Woman who is possess'd of her Native Innocence, and never knew Man, than on one that has Nightly Embraces with a frolicking Husband. It may be reasonably suppos'd, the forcible Endeavours, and the Terrors, must be considerably Greater to the one than the other; which might not be unjustly considered in a Distinction of Punishments: For though both are Unlawful, and great Violations, yet there  
are



are *Degrees of Violation*, which ought to be regarded.

If Rape of a married Woman, or Widow, at least of a married Woman, were only punished with Fine and Imprisonment for the first Offence, and the second Offence made Felony, I believe it would be thought, by most Persons in the World, to be an equal Punishment with that of Death, in all Cases inflicted for the Rape of a Virgin.

And the Punishment of Rape, has hitherto undergone several Variations in the several Ages past. In very ancient Times it was punished with Death; but afterwards it was look'd upon as a great Misdemeanor only, and not Felony, though dreadfully punished, *viz.* with the Loss of Eyes, and Lopping off the Members: And by the Stat. of *Westm.* 1. it was reduc'd to Trespass, and punished by a Fine, and two Years Imprisonment. But by the Stat. of *Westm.* 2. it was again made Felony, excluded of Clergy, as it is at this Day.

### Sodomy, how formerly Punished.

**S**ODOMY was Originally esteemed a more detestable Offence than the Rape of a Mother. And it's Punishment was Burying the Offenders Alive, deep in the Earth, so that the Remembrance of such horrid Criminals might thereby be totally extinguish'd. It is a Crime committed against Nature, so very Brutal, that  
none

none but Brutes in Humane Shape can be guilty of it: And it Stamps in the Countenances of the Agents a Look that is Infernal.

We have some Instances in our Books, of \* Women who have taken to their Embraces Monkeys and Baboons, and by Copulation with these have had Issue by them; a hopeful Progeny! But I do not find in any of our Books, or otherwise Remember, many Examples of Punishments of this Crime; though at several Seasons, within this Thirty Years past, it has been more in Use in this Island, perhaps than at any Time since the Destruction of *Sodom*: And this is the Reason, that this Head is mentioned, not so much to propose an Amendment of our Laws, as to Enforce the Execution of them; for *The Case is the same, to have no Laws, as to have them and not put them in Practice.*

Whether the Privacy of this Crime, or the Countenance it receives from some Persons of Figure, mostly Protects it, I shall not pretend to declare: But certain I am, there is a Remissness in our Magistrates, in their Scrutinies and Searches, which ought to extend to the Houses of ill Fame throughout this great City for Sodomites, with the same Diligence as for Whores and Libertines: It is frequent for our Justices to be inform'd of Assemblies of these detestable People, with no other Notice, than exclaiming against the Vice of the Age, without using the Authority they are entrusted with to make it less

I

less

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\* *A Lady of Quality that Conceive'd by a Baboon.*  
Coke's Inst.



less Vicious, as their Offices, and even the Principles of Nature require.

This Crime, by the Civil Law is punished with Death; and by the Laws of *England* it is rendered Felony without Benefit of Clergy.

### Sacrilege, to be punish'd beyond Theft.

THE Laws of *England*, I think, do not punish the Crime of Sacrilege otherwise than as common Theft. This I must esteem a Defect in our Laws, if it be only for the following Reason, *viz.* That as all Offences against the King and the Community, are of a higher Nature than those against Private Persons; so undoubtedly should the Crime of Sacrilege be adjudg'd more Heinous than any other Theft, it being nothing less than the Robbing of God, or at least of what is Dedicated to his Service.

The Civil Law takes Notice of this Crime with greater Severity than any other Thefts: It makes it a Capital Offence; whereas Theft is only punish'd with Whipping, Stigmatizing, Restitution, &c. (for the Roman Law esteems Death too great a Punishment of Theft) and if the Laws of *England* made a Distinction, between the Robbing of Churches and of Houses, it would add to the Honour of our Temporal, as well as Spiritual Governors.

If Consecrating of Churches, or other Places, set aside for the Service of God, be of any Use; or we have any Regard or Respect

spect to the Religion we Profess, or for any Religion, the Crime of Sacrilege should be punish'd in an extraordinary Manner: But I am not for an Invention of Punishments that are new; though I think, that the Judgment for Treason, should be the usual *Penalty* for Crimes of this Kind that are Notorious.

---

**Perjury, its Punishment should be adequate to the Crime.**

**P**ERJURY, by our Laws, only incurs a Punishment by Fine, Imprisonment, Pillory, &c. The Statute of Queen *Elizabeth* Enacts, that if any Person shall give false Testimony in a Court of Record, concerning Lands or Goods, he shall forfeit Twenty Pounds, suffer six Months Imprisonment, and be disabled for the future to be a Witness; and if he hath not sufficient to discharge the Fine, he shall be set on the Pillory, &c. And if any Person shall Suborn an Evidence to give Testimony, he is to forfeit Forty Pounds; and (if he hath not wherewith to satisfy the Forfeiture) he shall be imprisoned six Months, and stand in the Pillory, &c.

This is the Law; as it now stands, as to Perjury; which I take leave to observe, is no way proportioned to a Crime, that in a long Series of Practice, has ruined perhaps Thousands of People in their Fortunes, and sent many out of the World for Offences of which they



they were Innocent. Some Instances of this kind are within my own Memory ; and others are Recorded in Observations on Trials.

An Oath, being the *only Tie*, and Security we have, of our Lives and our Estates, it would be most Just and Equirable, if this Crime of Perjury were more severely punished. Where a Man's Life would be lost, by the Testimony of a false Evidence, the Person guilty of it should be punish'd with Death : And if a Man that by Perjury would deprive me of my Possessions, if he were not detected, on his Detection, were punish'd with Confiscation of his Estate, this would be no more than the Merit of his Offence.

'Tis owing to the slight Regard to the sacred Obligation of Oaths, that many flagrant Mischiefs have attended Mankind : And tho' the Punishment already inflicted, may have been thought, in some Measure, adequate to common Offences of Perjury ; yet in my Opinion it ought to be made Felony, where the Consequences proceeding from it are, and may be so very Injurious to Society.

This is all I have to mention on this Head, unless it be to Infer, that the Words, *to the best of the Knowledge*, ought not to be allow'd in our Oaths (or only in extraordinary Cases) but the Truth should be spoke both freely and absolutely.

Bzibery,

**Bribery, a great Offence, and ought to be Capital.**

**T**HE Punishment of Bribery, by the Civil Law, is Death; if the Bribe were received to put an Innocent Person to Death: And in Civil Cases, this Crime, by the same Law, is punished with Banishment and Confiscation of Estate.

I hope there needs no Dissertation in favour of a Law of this Kind, to be introduc'd in this Kingdom, when we have so very lately so very extraordinarily suffered by Crimes of this Nature: A general Ruin has been near in its Approaches, which is always the Case when National Corruption is Prevalent.

Justice need not be Sold, in a Country that has any Pretences to common Honesty. And by the Laws abroad, Bribery is so very Obnoxious, that no Magistrate, or Officer of the State, is permitted to accept of a Present when his Office is determined: And Presents to their Wives, or to their Servants, are upon all Occasions construed Presents to them. This Strictness, where the Publick Tranquility is at Stake, is highly Commendable; and worthy to be observ'd in the Kingdom of *Great Britain*.

And whatever some Persons may think, this I will venture Prophetically to pronounce, that we shall never be truly a Great and Flourishing People, till Bribery, in all Cases, and all Persons, is made a Capital Offence.



## Parliament Men, by whom fit to be Elected.

**W**HAT I have to observe under this Head, is proportionably short to the Success I expect from it; and contains only this, that I think 40 s. a Year is not, *at this Time*, a sufficient Qualification for an Elector of Members of Parliament.

My Reasons to support this Opinion, are the following: First, I take it, that 40 s. a Year, when the first Statute on this Head was pass'd (*viz.* the Reign of King Hen. 6.) was fully as much as 10 l. a Year now; and that a present Freehold of 10 l. a Year, is but Equal to 40 s. a Year then. So that I would Propose a Law to be Enacted, whereby 10 l. *per Annum* should be declared the Qualification of an Elector of Knights of the Shire. And as the Qualification of *Jurors* has been enlarged from 40 s. and 4 l. to 10 l. *per Annum*, I see no Reason, why an Ordinance of this Nature should not be submitted to.

'Tis a mistaken Notion of Liberty the Populace entertain, that every Person, though never so Mean, who is subject to the Government, ought to have a Share in it, by Voting in Elections of Members of Parliament. I could produce several great and undeniable Reasons against them. If the Substantial and *better Sort of Persons*, were to make our Elections only, it

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, would

would most certainly be better than if Elections were made by the whole Body of the People; they are less liable to Corruption, as their Circumstances are more Considerable, and their Understandings presumed to be Greater, as their Educations have been Superior.

But this Argument I would not push on too far, where so many will oppose me, though with little Reason, rightly considered.

### Penal Laws, how far Defective.

**O**UR Penal Statutes are made for the Prevention of Particular Mischiefs, which would ensue to Society, by Acts of Injustice. And the Penalties inflicted are Considerable, or otherwise, as these Mischiefs, either more or less, have relation to the Publick.

We have already many good Laws of this kind in Being; but the Difficulties attending Prosecutions upon them, makes them many Times prove of very little Service. I would therefore Recommend to our great Legislators, that the particular Manner of all Prosecutions upon Penal Laws, should be fully express'd in every Statute; that it should be reduc'd to an absolute and unerring *Certainty*, and that no Imperfection, how great soever, in the necessary and determinate Proceedings, should give any Advantage to an Offender that is Guilty.

By this Means, the Justice design'd by our Laws, would be effectually distributed, which



is now very often impeded, and wholly frustrated. And I would likewise recommend, a Penalty to be inflicted on all Sorts of Persons, who should know of any Offence, and not make a Discovery of it to a proper Magistrate. For the *Concealing* Offences of *all Kinds*, should be Punished, as it may be said, in some Measure, either to give a tacit Consent to them, or to be a Criminal Negligence.

**Informers, ought to be Esteem'd, Instead of being Despis'd.**

**T**HAT Person who Complains against, or Prosecutes in a Court of Justice, Offenders against the Laws, is called an Informer: A Name, that of late has been term'd a Reproach.

Indeed an Informer, who for Mercenary Views, to satisfy Revenge, to gratify a *Faction*, or for any other Cause than the Publick Good, undertakes to Prosecute upon our Penal Statutes, may be justly reproached for his Conduct: But certainly a Man, who complains of an Offence, in order to its Punishment, *merely for the Good of his Country*, is not to be esteemed Infamous for this Office, which is no more than his Duty: And, as I have already observ'd, it would be Criminal in him not to do it.

This was the Office of Informers in Ages past, and so far from being Disgraceful, that it was highly Honourable: (For an Informer against Vice,

Vice, rightly considered, bears the same Signification with a Reformer of Manners: ) Their Numbers were then proportionably great; but in the present Times, you shall find at least that there are Twenty Criminals for one Informer: And the greatest Offenders, are generally above the Office of Informing, unless it be only for the Safety of their Lives.

Till Informers are countenanced and respected as they ought, our good and wholesom Statutes must, many of them, remain wholly unexecuted: And if the ancient Esteem, shewn to these sort of People, cannot be restored; in my Opinion, there should be an Office erected, with proper Administrators, whose only Business should be to detect and inform against Criminals of all Denominations, from the Highest to the Lowest, that every Crime, of every Kind, may impartially meet with the Punishment that is due to it, and our Laws in general be no longer Useless.

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Justice, not to be Delay'd, nor Offices,  
Fees, &c. extraordinary allow'd.

**W**E have a Maxim in our Law, mentioned by *Flowden*, *Dilationes in Lege sunt odiosae*; and by a Statute pass'd in the Reign of Queen *Anne*, probable Matter is to be shewn, and prov'd on Oath, before a Dilatory Plea shall be accepted.



There are several other Statutes which prohibit Delays in the Prosecution of Law-Suits, though none of them, as I know of, that are *Effectual*; for either Evidence is not ready, or some Excuse or other is eternally in the Way, whereby a Poor indigent Client, has oftentimes a Cause too long Depending; and if he has at last the good Fortune to Recover, the Remedy is sometimes worse than the Disease. I know an Attorney (a Disgrace to the Name) who oftentimes finds his Clients in the Possession of Estates, but he seldom leaves them, otherwise than in a Goal.

These Discouragements in our Law, have made many Persons sit easy under Injuries, rather than Hazard further Oppressions; occasion'd by ill Practisers, by tedious Delays, and exorbitant Expences, in Fees, Offices, &c. the last whereof, a very great Burden, if one Office, generally speaking, may well Dispatch the Business transacted in three or four.

I shall not enlarge upon a Fact that is so very well known: And I am for a Reduction of Fees, as well as Offices, as the greatest Means of doing Justice to many, who labour under Injuries, without injuring any one; for none can be said to be in any Case injured, when they are gratified for their Trouble equal to their Merit.

And as to Delays, I would propose a Disability to that Counsel for the future to Practice, who should presume to offer a Dilatory Plea, unless not only Probable Matter, but Apparent Matter of the greatest Consequence, be sufficiently shewn, and prov'd to the Court wherein Motion is made.

## Judgment, Justice, &amp;c. how Administred.

**T**HE Administration of Justice, was originally in the Crown; and in former Times our Kings in Person Rode through the Realm once in seven Years, to judge of, and Determine Crimes and Offences. Afterwards Justices in Eyre were appointed; and since, Justices of Assize and Goal-Delivery.

By the Judges of the Courts at Westminster, Justice has been long since administred; and they have Circuits appointed them, on which they attend in the several Counties of England, to give Judgment as the Laws direct, and Decide all Matters and Controversies whatsoever.

Our Sages of the Law wisely determine what is brought before them; and in Crimes that are Capital, a Plea is allow'd in Arrest of Judgment, the Foundation of which consists of many Particulars, some whereof are for Defect in Proceedings, where the Testimony is false, a Woman is with Child, &c. The first of these Causes procures a Respite of Execution for Forty Days, and the latter for Forty Weeks, or more, if the Child be not Born in the mean time: Judgment is to be stay'd till the Woman is delivered, that the Innocent Child may not be a Sufferer with the Guilty Mother.

It has been judg'd, by some Persons, an Abuse of our Laws, that *Divers Punishments* have been inflicted for one and the same Trespass,



*viz.* a Corporal and Pecuniary Punishment; and yet a great deal may be offered in its Defence, as that it is more Favourable a Punishment should be divided than be Entire; that a Man should be sentenced to Imprisonment for a Year, and to pay 50 l. Fine, rather than suffer two Years Imprisonment, where the Offence requires it: Though I cannot but be of Opinion, that if a Man were only Fined, or only Imprisoned, it would, in general Esteem, be the most Regular and Equitable Judgment.

In all Cases of Judgment, the greatest Deliberation, Wisdom, and Prudence, are absolutely Necessary. A Judge, indeed, may sometimes mitigate his Sentence; but it redounds to his Honour, if he at first so well Considers it, as not to admit of it.

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**Plaints, Trials, Juries, &c. should not be too much encouraged.**

**I**N my Opinion, no Complaint should be received in any Court of Record, without Witnesses immediately present to testify the Truth of it. And I could wish, that (as by the Civil Law) the Parties contending were in all Cases obliged to give mutual Security to each other; the Plaintiff, that he will prosecute his Suit, and pay Costs if he is Condemn'd; and the Defendant for his Continuance in Court till Sentence is pronounced: And that the Plaintiff were to make Oath he did not Commence his

Action

Action out of Malice; and the Defendant, that he Contends because he is persuaded he has a good Cause: These would very much facilitate Justice in Determinations, and prevent many Vexatious and Malicious Prosecutions.

But though we have not, in this Respect, the Advantages which are given by the Civil Law, yet we have the Benefit of our Trials by *Jury*; though our Gentlemen on Juries ought well and maturely to consider, in Criminal Cases, that the Life of a Man is always at Stake, and if they bring in a Verdict that is false, they are no better than Murderers, and as such ought to be treated; for unless they Pronounce that the Offender is Guilty, it is well known the Law has no Power to inflict a Punishment, or to execute Sentence upon him.

This should be thoroughly weighed and considered, otherwise this glorious Freedom in our Laws may grow to Tyranny: I am therefore willing to hope, that our Jurors do thus far acquit themselves as they ought, as not to be too forward in giving their Verdicts, or be any ways Biased by others, where the Life of a Man, who perhaps does not deserve Death, may be taken away: And on the other Hand, that they never let Crimes that are apparent, especially of Blood, escape unpunished.

Prodigals,



the Commission of Matrimony; and the Defendant, that  
 the Complainant, because he is persuaded he has a  
 Justice in Determining, and prevent many

**Prodigals, ought to be taken Notice of  
 by our Laws.**

**PRODIGALS**, in Foreign Countries, are  
 publicly and solemnly Proclaim'd, that  
 they may be known to the People; their Con-  
 tracts and Obligations are Null, and their Acts are  
 compar'd to those of Madmen, like whom they  
 are presum'd to act; and the nearest Relation has  
 the Custody of them, and Care of their Estates.

With regard to this, it would be very Happy  
 for many in this Kingdom, if Prodigals were  
 liable to the Incapacities of Minors, and *Guar-  
 dians* were appointed over them: And if our  
 Kings were the general Guardians of Prodigals,  
 as well as of Idiots and Lunaticks, it would be  
 a certain Means of *Preserving from Ruin* the Es-  
 tates of many ancient Families.

But I would not have every Man reproach'd  
 as a Prodigal, that *reputably* lives above his In-  
 come: If this were permitted, we should have  
 very few Families of Spirit without a Prodigal in  
 it: That Man only should be liable to this re-  
 proachful Denomination, who squanders away  
 his Patrimony in a Manner unaccountable,  
 when he has no farther Supplies, or probable  
 Means, for his Subsistence in Life.

Husband

Husband and Wife, have too great Privileges by Marriage.

**U**NDER the Head of Marriage, I shall consider two Things: *First*, that by the Civil Law, a Woman is restrained from marrying with a second Husband, 'till she has seen a Year after her first Husband's Death. *Secondly*, if a Wife, having Children, is left Executrix by her Husband, and marries again, *the Use of the Estate only*, and not the Property, goes to the second Husband during Life, and afterwards the Right descends to the Children of the first Husband.

These are ordain'd by the Civil Law, though not by the Laws of *England*; and the Reasons for them are these: In the first Case, common Decency requires, that a Woman should not be too hasty for a second Marriage; and though the Laws of *England* permit a Son that's Born in such second Marriage, within nine Months after the first Husband's Decease, to be Heir either to the first or second Husband; yet this does not Determine *whose Son* he is, which would be certainly known, if the Woman were enjoyn'd not to consummate second Marriage, 'till a certain Space of Time were expired.

The second Article I have mentioned, is so very Equitable, that if it were a Law in this Kingdom, we should not have such Numbers of Orphans in unhappy Circumstances, with which  
we



we abound, occasion'd by the Marriages of Spendthrifts with forward Widows.

### Usury, to be further prohibited.

**T**HE Scandalous Practice of Usury, ought to be an Abomination to every honest Person; And common Interest of Money may sometimes be a Grievance.

So favourable are the Laws of other Countries, that Interest has been *only* allow'd of where the Debtor has made an Advantage of the Money that has been Lent him, and that at least in Proportion to the Interest: It is in all Cases prohibited to be made Part of the Principal; and Interest upon Interest is hardly any where known but in this Kingdom.

To prey upon the Necessities of Mankind, is abhor'd and detested by the Laws abroad; which ordain, that where Money is borrowed on the Security of a *Pawn*, the Pawn shall in no Case be forfeited on Non-payment of the Money, at the Time agreed upon, but it is to be Sold by the Authority of the Magistrate, after Notice given of a sufficient Time, to the Debtor to redeem it; and then the Debt being discharg'd, by the Sale of the Magistrate, the Debtor shall be put in Possession of the Overplus.

I should be very well pleas'd to see this made a Part of the Law of *England*, with a Penalty annex'd to it; that those Caterpillars call'd *Brokers*, may no longer be their own Judges, to

Lord

Lord it over their Creditors, and Feast on the Calamities of the Poor and Miserable.

### Imprisonment, for what design'd.

**A**S a Man that is Diseased, is not suffered to remain amongst those that are Sound; so Offenders against the Laws, ought to be separated from the Publick by Imprisonment; that the Innocent may not be infected by their Crimes: For this Cause, were Goals and Prisons originally Ordain'd.

But there is one Thing in our Laws, with respect to Imprisonment, that has been long ago complain'd of; and that is, when a Man is accus'd of a Crime he is *Laden with Irons*, and confin'd in a Dungeon (which oftentimes happens) before he is Attainted of the Offence: This is a Severity by no means Agreeable to our Laws in general, which *favour Liberty*; for notwithstanding there must be some Evidence as the Foundation of a Commitment, yet every Man that is committed to Newgate, is not, on his Trial, found Guilty of the Crime where-with he is charged.

It would be a more proper Season, after the Trial is decided, when the Guilt is made *certain*, for the Offender to have Irons, and to be treated Ignominiously. And as to Persons that are imprisoned in Civil Cases, tho' the *Habeas Corpus Act* was gloriously design'd for the Liberty of the Subject; by the extraordinary *Expences* requir'd



quir'd to obtain it, one should imagine it was rather calculated for the Benefit of Offices, than the Relief of Poor distressed Debtors. The Purchase of this Writ, the most favourably solicited, amounts to 6 or 7*l.* which in my Opinion ought not to exceed one half of a Sum so Considerable.

We have also a further Grievance, relating to Imprisonment, that is infinitely worse than what I have mentioned, and which loudly calls upon the Government for Redress. Our *Marshalsea*, and several other Prisons in and about this City, are fill'd with innumerable Prisoners, many whereof labour under Imprisonment for Years, for a Debt only of a few Shillings: I have been well inform'd, that nothing is more Common, than for a Poor wretched Man to be imprison'd for a Debt of six Pence, or a Shilling, and there detain'd for so small a *Trifle*, in woeful Circumstances, and sometimes *Famish'd*; which is the greatest Scandal to a Kingdom so famous for Liberty as *England*.

### Treason, and its Punishment, &c.

**T**REASON is a transcendent Crime, being committed against the King, and the Security of the Kingdom. It cannot be punish'd with too great Severity, as to the Authors of it: But I think, that the perpetual Forfeiture of Estate, and the Corruption of Blood, are a Hardship upon a *Man's Posterity*, who are some-

sometimes the Reverse to their Criminous Parents.

Our Laws indeed assign Reasons for this Punishment, *viz.*—That the Father's Infamy should accompany *them*, and Deter them from those Crimes, to which they are presumed to be enclinable by Nature: But this Presumption may not always be sufficient to warrant a Judgment, which even in Arbitrary Kingdoms is more favourable: In *France* and *Holland*, and some other Countries, the Sons of Traitors are allotted a considerable Portion of their Father's Patrimony for their Maintenance; and they are so far regarded as not to be rendred Infamous.

I would here Enlarge upon this Head, and make some Remarks on the Crime of *Petit Treason*; and particularly insist, that this Crime should extend to Murders perpetrated by *Children* on their Fathers, as well as to those of Servants on their Masters. But some Persons may think I am guilty of a Presumption, as to what I have already mentioned, for the Amendment of our Laws; so that I shall proceed to the second Part of my ESSAY, the Reduction of our Laws; and submit the whole that I have said, to the Candid Judgment of my Superiors in Knowledge.



OF THE  
REDUCTION  
OF THE  
Laws of ENGLAND.

I Am now proceeding to my second Head propos'd, *viz. The Reduction of the Laws of England*; as Authority for which I could instance the Opinions of some of our greatest Writers of Antiquity. And if in early Times, there was a Necessity for a Reduction of our Laws, much more may be said for it at present: We have now seldom a Session that does not furnish us with Statutes (besides those that lay Annual Duties on the Subject) more Voluminous than the Ordinances of many Years in the Times of our Forefathers.

Our Acts of Parliament, like our Deeds of Conveyances, have had an *Encrease* surprizing to all considerate Persons, since this Encrease has chiefly promoted their Perplexity; and this Perplexity has met with an Encouragement from those very Gentlemen who ought to clear

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it up. By the Behaviour of some Persons, one might Imagine that the Laws of this Kingdom were in some measure supported by the same Artifices as the Religion of Rome: Our Lawyers, for the most part, Study to make the Learning of the Law unintelligible to all others but themselves: The Romish Priests are equally indefatigable to confound their Devotees, in the Knowledge of the Superstitions they are taught to Embrace.

The Law of England, is not, *in it self*, such a Difficulty for Persons, of common Understandings, to attain a tolerable Knowledge of, as the People in general are made to apprehend: But 'tis the *Perplexity*, and the *Multiplicity* of our Laws, that renders the Knowledge of them Difficult. Wherefore, I shall endeavour to make out, that their Perplexity, and Multiplicity may be very much avoided, and particularly shew how, and in what Cases they may be best avoided for the Good of the Publick.

This Work, I am humbly of Opinion, is only to be effected by *Reducing the several long and accumulated Acts, under every individual Head, to one concise and accurate Statute*. The Heads indeed are considerably Numerous, so that of Necessity the Acts must be Numerous; though the Number by this means would be reduced to a fourth Part of the present Number, and at least the same Proportion would follow as to Quantity.

*Magna Charta* will justify me in this, wherein all the Laws of this Kingdom, of any Signification, that were Subsisting at the Time the Charter was granted, are Repeated and Confirmed



firmed in the Compass only of one of our Modern Statutes. And to bring what I mention to a plain Demonstration, I shall insert at length the three great Laws concerning *Frauds and Perjuries* (a Head that has much less Prolixity than many I might have Chosen) and concisely Reduce them to one Single Act, which will evidently shew, that what I have propos'd is Practicable, if not easie to be Perform'd, by Men Eminent in the Law.

*The Stat. 13 Eliz. c. 5. against Fraudulent Deeds, Alienations, &c.*

**F**OR the avoiding and abolishing of feigned Covenous and Fraudulent Feoffments, Gifts, Grants, Alienations, Conveyances, Bonds, Suits, Judgments and Executions, as well of Lands and Tenements, as of Goods and Chattels, more commonly used and practised in these Days than hath been heard of heretofore; which Feoffments, Gifts, Grants, Alienations, Conveyances, Bonds, Suits, Judgments and Executions, have been, and are devised and contrived of Malice, Fraud, Covin and Collusion, to the End and Intent to Delay, Hinder or Defraud Creditors and others of their Just and Lawful Actions, Suits, Debts, Accompts, Damages, Penalties, Forfeitures, Heriots, Mortuaries and Reliefs, not only to the Let or Hindrance of the due Course and Execution of  
Law

Law and Justice, but also to the Overthrow of all true and plain Dealing and Bargaining between Man and Man, without which no Common-Wealth or Civil Society can be maintained or continued.

Be it therefore Declared, Ordained and Enacted by the Authority of this present Parliament, that all and every Feoffment, Gift, Grant, Alienation, Bargain and Conveyance of Lands, Tenements, Hereditaments, Goods and Chattels, or of any of them, or of any Lease, Rent, Common, or other Profit or Charge out of the same Lands, Tenements, Hereditaments, Goods and Chattels, or any of them, by Writing or otherwise, and all and every Bond, Suit, Judgment and Execution, at any Time had or made since the Beginning of the Queen's Majesty's Reign that now is, or at any Time hereafter to be had or made, to or for any Intent or Purpose before declared and expressed shall be from henceforth deemed and taken (only as against that Person or Persons, his or their Heirs, Successors, Executors, Administrators and Assigns, and every of them, whose Actions, Suits, Debts, Accounts, Damages, Penalties, Forfeitures, Heriots, Mortuaries and Reliefs, by such Covenous or Fraudulent Devices or Practices as aforesaid, are, shall or might be in any wise disturbed, hindered, delay'd, or defrauded) to be clearly and utterly void, frustrate and of none Effect, any Pretence, Colour, feigned Consideration, Expressing of Use, or any other Matter or Thing to the Contrary notwithstanding.

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And



And be it further Enacted by the Authority aforesaid, that all and every the Parties to such feigned, Covenous or Fraudulent Feoffment, Gift, Grant, Alienation, Bargain, Conveyance, Bonds, Suits, Judgments, Executions, and other Things before expres'd, and being Privy and Knowing of the same, or any of them, which at any Time after the 10th Day of June next coming, shall wittingly and willingly put in Use, Avow, Maintain, Justify or Defend the same, or any of them, as true and done, had or made, *Bona fide*, and upon good Consideration, or shall Alien or Assign any the Lands, Tenements, Goods, Leases, or other Things before mentioned, to him or them conveyed as aforesaid, or any Part thereof, shall incur the Penalty and Forfeiture of one Year's Value of the said Lands, Tenements, and Hereditaments, Leases, Rents, Commons or other Profits, of or out of the same, and the whole Value of the said Goods and Chattles, and also so much Money as are or shall be contained in such Covenous and feigned Bonds, the one Moiety whereof to be to the Queen's Majesty, her Heirs and Successors, and the other Moiety to the Party or Parties grieved by such feigned and fraudulent Feoffment, Gift, Grant, Alienation, Bargain, Conveyance, Bonds, Suits, Judgments, Executions, Leases, Rents, Commons, Profits, Charges, and other Things aforesaid, to be recovered in any of the Queen's Courts of Record, by Action of Debt, Bill, Plaint, or Information, wherein no Escoin, Protection, or Wager of Law shall be admitted for the Defendant or Defendants; And also being thereof lawfully

lawfully convicted, shall suffer Imprisonment for one half Year without Bail or Mainprize.

10 Provided always, and be it further Enacted by the Authority aforesaid, that whereas several Common Recoveries of Lands, Tenements, and Hereditaments, have heretofore been had, and hereafter may be had against Tenants in Tail, or other Tenants of the Freehold, the Reversion or Remainder, or the Right of Reversion or Remainder then being in any other Person or Persons, that every such Common Recovery heretofore had, and hereafter to be had of any Lands, Tenements or Hereditaments, shall, as touching such Person and Persons, which then had any Remainder or Reversion, or Right of Remainder or Reversion, and against the Heirs of every of them, Stand, Remain, and be of such like Force and Effect, and of none other, as the same should have been, if this Act had never been made.

Provided always, and be it further Enacted by the Authority aforesaid, that this Act, or any Thing therein contained, shall not extend to make void any Estate or Conveyance, by Reason whereof any Person or Persons shall use any Voucher in any Writ of Formedon, now depending, or hereafter to be depending; but that all and every such Vouchers in any Writ of Formedon, shall stand, and be in full Force and Effect, as if this Act had never been had or made; any Thing before in this Act contained to the Contrary notwithstanding.

Provided also, and be it Enacted by the Authority aforesaid, that this Act, or any Thing therein contained, shall not extend to any E-



state or Interest in Lands, Tenements, Hereditaments, Leases, Rents, Commons, Profits, Goods or Chattels, had, made, conveyed or assured, or hereafter to be had, made, conveyed or assured, which Estate or Interest is, or shall be, upon good Consideration, and *Bona fide*, lawfully conveyed or assured to any Person or Persons, or Bodies Politick or Corporate, not having at the Time of such Conveyance or Assurance to them made, any manner of Notice or Knowledge of such Covin, Fraud, or Collusion, as is aforesaid; any Thing before mentioned to the Contrary hereof notwithstanding.

*The Stat. 27 Eliz. c. 4. against Covenous and Fraudulent Conveyances.*

**F**ORASMUCH as not only the Queen's most excellent Majesty, but also divers of her Highness's good and loving Subjects, and Bodies Politick and Corporate, after the Conveyances obtained or to be obtained, and Purchases made or to be made of Lands, Tenements, Leases, Estates and Hereditaments, for Money or other good Considerations, may have, incur and receive great Loss and Prejudice by reason of Fraudulent and Covenous Conveyances, Estates, Gifts, Grants, Charges, and Limitations of Uses heretofore made, or hereafter to be made, of in or out of Lands, Tenements or Hereditaments so purchased; which said Gifts, Grants, Charges, Estates, Uses and Conveyances

veyances were, or hereafter shall be meant and intended by the Parties that so make the same, to be Fraudulent and Covenous, of Purpose and to the Intent to deceive such as have purchased, or shall Purchase the same; or else by the secret Intent of the Parties, the same to be to their own proper Use, and at their free Disposition, coloured nevertheless by a feigned Countenance and Shew of Words and Sentences, as though the same were made *Bona fide*, for good Causes, and upon just and lawful Considerations.

For Remedy of which Inconveniencies, and for avoiding such Fraudulent, Feigned and Covenous Conveyances, Gifts, Grants, Charges, Uses and Estates, and for the Maintenance of upright and just Dealing in the Purchasing of Lands, Tenements and Hereditaments: Be it Ordained and Enacted by the Authority of this present Parliament, that all and every Conveyance, Grant, Charge, Lease, Estate, Incumbrance, and Limitation of Use or Uses, of, in, or out of any Lands, Tenements, or other Hereditaments whatsoever, had or made at any Time heretofore since the Beginning of the Queen's Majesty's Reign that now is, or at any Time hereafter to be had or made, for the Intent and of Purpose to Defraud and Deceive such Person or Persons, Bodies Politick or Corporate, as have Purchased, or shall afterwards Purchase in Fee-Simple, Fee-Tail, for Life, Lives or Years, the same Lands, Tenements, and Hereditaments, or any Part or Parcel thereof, so formerly Conveyed, Granted, Leased, Charged, Incumbred or Limited in Use, or to



Defraud and Deceive such as have purchased or shall purchase any Rent, Profit or Commodity in or out of the same, or any Part thereof, shall be deemed and taken only as against that Person and Persons, Bodies Politick or Corporate, his and their Heirs, Successors, Executors, Administrators and Assigns, and against all and every other Person and Persons lawfully having or claiming by, from or under them, or any of them which have purchased, or shall hereafter so purchase for Money, or other good Consideration the same Lands, Tenements or Hereditaments, or any Part or Parcel thereof, or any Rent, Profit or Commodity in or out of the same, to be utterly Void, Frustrate and of none Effect, any Pretence, Colour, feigned Consideration, or Expressing of any Use or Uses to the Contrary notwithstanding.

And be it further Enacted by the Authority aforesaid, that all and every the Parties to such Feigned, Covenous and Fraudulent Gifts, Grants, Leases, Charges or Conveyances before expressed, or being privy to or knowing of the same, or any of them, which after the 20th Day of *April* next coming shall wittingly and willingly put in Use, Avow, Maintain, Justify or Defend the same, or any of them, as true simple, and done, had or made, *Bona fide*, or upon good Consideration, to the Disturbance or Hinderance of the said Purchaser or Purchasers, Lessees or Grantees, or of or to the Disturbance or Hinderance of their Heirs and Successors, Executors, Administrators or Assigns, or such as have or shall lawfully Claim any Thing by, from, or under them, or any of them, shall incur

incur the Penalty and Forfeiture of one Year's Value of the said Lands, Tenements and Hereditaments so purchased or charged, the one Moiety whereof to the Queen's Majesty, her Heirs and Successors, and the other Moiety to the Party or Parties grieved by such feigned and fraudulent Gift, Grant, Lease, Conveyance, Incumbrance, or Limitation of Use, to be recovered in any of the Queen's Courts of Record, by Action of Debt, Bill, Plaint, or Information, wherein no Essoin, Protection, or wager of Law shall be admitted for the Defendant or Defendants; and also being thereof lawfully Convicted, shall suffer Imprisonment for one half Year, without Bail or Mainprize.

Provided always, and be it Enacted by the Authority aforesaid, that this Act, or any Thing therein contained, shall not extend or be construed to impeach, defeat, make void or frustrate any Conveyance, Assignment, Assurance, Grant, Charge, Lease, Estate, Interest or Limitation of Use or Uses, of, in, to, or out of any Lands, Tenements or Hereditaments heretofore at any Time had or made, or hereafter to be had or made, upon or for good Consideration, and *Bona fide*, to any Person or Persons, Bodies Politick or Corporate, any Thing before mentioned to the Contrary hereof notwithstanding.

And be it further Enacted by the Authority aforesaid, that if any Person or Persons have heretofore, since the Beginning of the Queen's Majesty's Reign that now is made, or hereafter shall make any Conveyance, Gift, Grant, Demise, Charge, Limitation of Use or  
Uses,



Uses, or Assurance of, in, or out of any Lands, Tenements or Hereditaments, with any Clause, Provision, Article or Condition of Revocation, Determination or Alteration, at his or their Will or Pleasure, of such Conveyance, Assurance, Grants, Limitations of Uses or Estates, of, in, or out of the said Lands, Tenements or Hereditaments, or of, in, or out of any Part or Parcel of them, contained or mentioned in any Writing, Deed or Indenture of such Assurance, Conveyance, Grant or Gift; and after such Conveyance, Gift, Grant, Demise, Charge, Limitation of Uses, or Assurance so made or had, shall or do Bargain, Sell, Demise, Grant, Convey or Charge the same Lands, Tenements, or Hereditaments, or any Part or Parcel thereof, to any Person or Persons, Bodies Politick and Corporate, for Money, or other good Consideration paid or given (the said first Conveyance, Assurance, Gift, Grant, Demise, Charge or Limitation, not by him or them revoked, made void or altered, -according to the Power and Authority reserved unto him or them, in and by the said secret Conveyance, Assurance, Gift, or Grant) that then the said former Conveyance, Assurance, Gift, Demise and Grant, as touching the said Lands, Tenements and Hereditaments, so after Bargained, Sold, Conveyed, Demised or Charged, against the said Bargainees, Vendees, Lessees, Grantees, and every of them, their Heirs, Successors, Executors and Assigns, and against all and every Person and Persons which have, shall, or may lawfully Claim any Thing by, from, or under them, or any of them, shall be deemed, taken, and

and judged to be Void, Frustrate, and of none Effect, by force and virtue of this present Act.

Provided nevertheless, that no lawful Mortgage made, or to be made, *Bona fide*, and without Fraud or Coyin, upon good Consideration, shall be impeached or impaired by force of this Act, but shall stand in the like Force and Effect, as the same should have done, if this Act had never been had or made, any Thing in this Act to the Contrary in any wise notwithstanding.

Provided also, that this Act, nor any Thing therein contained, shall not extend, or be construed to make good any Purchase, Grant, Lease, Charge or Profit, of, in, or out of any Lands, Tenements or Hereditaments, heretofore made Void, defeated, or undone, by reason of any former Conveyance, Grant, or Assurance, so as the Party or Parties, or their Heirs or Assigns, which have so defeated or made void the same, were in actual Possession the first Day of this present Parliament, of, or in the said Lands, Tenements, or Hereditaments, whereof or out of which any such Purchase, Grant, Lease, Charge or Profit was made.

The rest of this Act relates to Statutes-Merchant, &c. which are requir'd to be entered by the Clerk of the Recognizances; or to be void, as against Purchasers of the Lands, Tenements or Hereditaments, liable to the Statute, for Money, or other good Consideration, &c.



*The Statute 29 Car. 2. c. 3. for Prevention  
of Frauds and Perjuries.*

**F**OR prevention of many fraudulent Practices, which are commonly endeavoured to be upheld by Perjury and Subornation of Perjury, Be it Enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled, and by the Authority of the same, That from and after the 24th Day of June, which shall be in the Year of our Lord, 1677. All Leases, Estates, Interests of Freehold, or Terms of Years, or any uncertain Interest of, in, or out of any Messuages, Manors, Lands, Tenements or Hereditaments, made or created by Livery and Seisin only, or by Parol, and not put in Writing, and signed by the Parties so making or creating the same, or their Agents, thereunto lawfully authorized by Writing, shall have the Force and Effect of Leases, or Estates, at Will only, and shall not, either in Law or Equity, be deemed or taken to have any other or greater Force or Effect; any Consideration for making any such Parol-Leases or Estates, or any former Law or Usage to the Contrary notwithstanding.

Except nevertheless all Leases not exceeding the Term of three Years from the making thereof,

thereof, whereupon the Rent reserved to the Landlord, during such Term, shall amount unto two third Parts, at the least, of the full improved Value of the Thing demised.

And moreover, that no Leases, Estates, or Interests, either of Freehold, or Terms of Years, or any Uncertain Interest, not being Copyhold, or Customary Interest, of, in, to, or out of any Messuages, Manors, Lands, Tenements, or Hereditaments, shall at any Time after the said 24th Day of *June*, be assigned, granted or surrendered, unless it be by Deed or Note in Writing, Signed by the Party so Assigning, Granting or Surrendring the same, or their Agents thereunto lawfully Authorized by Writing, or by Act and Operation of Law.

And be it further Enacted by the Authority aforesaid, that from and after the said 24th Day of *June*, no Action shall be brought whereby to charge any Executor or Administrator upon any special Promise, to answer Damages out of his own Estate; or whereby to charge the Defendant upon any special Promise to answer for the Debt, Default or Miscarriages of another Person; or to charge any Person upon any Agreement made upon Consideration of Marriage; or upon any Contract or Sale of Lands, Tenements, or Hereditaments, or any Interest in or concerning them; or upon any Agreement that is not to be perform'd within the Space of one Year from the making thereof, unless the Agreement upon which such Action shall be brought, or some Memorandum or Note thereof shall be in Writing, and signed by the Party to be charged therewith, or some



other Person thereunto by him lawfully Authorized.

And be it further Enacted by the Authority aforesaid, that from and after the said 24th Day of *June*, all Devises and Bequests of any Lands or Tenements, Devisable either by force of the Statute of Wills, or by this Statute, or by force of the Custom of *Kent*, or the Custom of any Borough, or any other Particular Custom, shall be in Writing, and signed by the Party so devising the same, or by some other Person in his Presence, and by his express Directions, and shall be attested and subscribed in the Presence of the said Devisor, by three or four Credible Witnesses, or else they shall be utterly Void, and of none Effect.

And moreover, no Devise in Writing, of Lands, Tenements or Hereditaments, or any Clause thereof, shall at any Time after the said 24th Day of *June*, be Revocable, otherwise than by some other Will, or Codicil in Writing, or other Writing declaring the same, or by Burning, Cancelling, Tearing or Obliterating the same by the Testator himself, or in his Presence, and by his Directions and Consent; But all Devises and Bequests of Lands and Tenements, shall remain and continue in Force until the same be burnt, cancelled, torn or obliterated by the Testator, or by his Directions, in manner aforesaid; or unless the same be altered by some other Will or Codicil in Writing, or other Writing of the Devisor, Signed in the Presence of three or four Witnesses declaring the same; any former Law or Usage to the Contrary notwithstanding.

And

And be it further Enacted by the Authority aforesaid, that from and after the said 24th Day of *June*, all Declarations or Creations of Trusts or Confidences of any Lands, Tenements, or Hereditaments, shall be manifested and proved by some Writing Signed by the Party who is by Law enabled to declare such Trust, or by his last Will in Writing, or else they shall be utterly Void and of none Effect:

Provided always, that where any Conveyance shall be made of any Lands or Tenements, by which a Trust or Confidence shall or may arise or result by the Implication or Construction of Law, or be transferred or extinguished by an Act or Operation of Law; then, and in every such Case, such Trust or Confidence shall be of the like Force and Effect as the same would have been if this Statute had not been made: Any Thing herein before contained to the Contrary notwithstanding.

And be it farther Enacted, that all Grants and Assignments of any Trust or Confidence shall likewise be in Writing, Signed by the Party Granting or Assigning the same, or by such last Will or Devise, or else shall likewise be utterly Void and of none Effect.

And be it further Enacted by the Authority aforesaid, that from and after the 24th Day of *June*, no Contract for the Sale of any Goods, Wares and Merchandizes, for the Price of Ten Pounds Sterling, or upwards, shall be allow'd to be Good, except the Buyer shall accept Part of the Goods so Sold, and actually receive the same, or give something in Earnest to bind the Bargain, or in Part of Payment,



Payment, or that some Note or Memorandum in Writing of the said Bargain be made and Signed by the Parties to be charged by such a Contract, or their Agents, thereunto lawfully Authorized.

And for Prevention of fraudulent Practices, in setting up Nuncupative Wills, which have been the Occasion of much Perjury, Be it Enacted by the Authority aforesaid, that from and after the aforesaid 24th Day of *June*, no Nuncupative Will shall be good, where the Estate thereby bequeathed shall exceed the Value of Thirty Pounds, that is not prov'd by the Oaths of three Witnesses (at the least) that were present at the Making thereof; nor unless it be proved that the Testator, at the Time of pronouncing the same, did bid the Persons present, or some of them, bear Witness, that such was his Will, or to that Effect; Nor unless such Nuncupative Will were made in the Time of the last Sicknes of the Deceased, and in the House of his or their Habitation or Dwelling, or where he or she hath been Resident for the Space of Ten Days, or more, next before the making of such Will; except where such Person was surprized or taken Sick, being from his own Home, and Die before he return'd to the Place of his or her Dwelling.

And be it further Enacted, that after six Months passed after the Speaking of the pretended Testamentary Words, no Testimony shall be received to prove any Will Nuncupative, except the said Testimony, or the Substance thereof, were committed to Writing within six Days after the Making of the said Will.

And

And be it further Enacted, that no Will in Writing, concerning any Goods or Chattels, or Personal Estate, shall be Repealed, nor shall any Clause, Devise or Request therein, be altered or changed, by any Words, or Will by Word of Mouth only, except the same be in the Life of the Testator committed to Writing, and after the Writing thereof Read unto the Testator, and allowed by him, and proved to be so done, by three Witnesses at the least.

Provided always, that notwithstanding this Act, any Soldier, being in actual Military Service, or any Mariner, or Seaman being at Sea, may Dispose of his Moveables, Wages and Personal Estate, as he or they might have done before the Making of this Act.

The Remainder of this Statute concerns Lands held in Trust, which are declared Assets in the Hands of Heirs, &c. The Day of Signing Judgments, is to be entered on the Margin of the Roll; and such Judgments, as against Purchasers for Valuable Consideration, of Lands charged thereby, shall be Judgments only from the Time they shall be so Signed.

The Preceding Statutes REDUC'D to  
One ACT.



*An Act propos'd, for Prevention of Frauds  
in Conveyances.*

**F**OR the Prevention of many Evil Practices, which of late have been frequent, by reason of Conveyances, Bargains, and Contracts; and for the Maintenance of just and upright Dealings between Man and Man; Be it Enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords and Commons in Parliament assembled, and by the Authority of the same, That from and after the 24th Day of *June*, 1724. All Leases and uncertain Interests, of and in any Messuages, Lands, Tenements or Hereditaments, made for any Time or Term exceeding three Years, not put in Writing, and Sign'd by the Parties making the same, or their Agents, lawfully Authoriz'd, shall have only the Force of Leases at Will, and no greater Effect, by any Construction of Law whatsoever.

And also it is Enacted, that no Leases, Conveyances, Estates or Interests of, in, or out of any Manors, Messuages, Lands, Tenements or Hereditaments; nor Grant, or Assignment of any Trust or Confidence; nor Agreement made in Consideration of Marriage; nor Contract for Sale of Lands, Tenements, or Hereditaments; or any Agreement that is not to be perform'd in a Year, shall after the said 24 Day of *June*, be good in Law, unless the same be by Deed or Note in Writing, Signed by the Parties to  
the

the same, having Authority so to do, and to be Charged therewith, or their Agents, lawfully Authorized by Writing. And no Contract for the Sale of any Goods, Wares, or Merchandizes, which shall be of the Value of Ten Pounds or upwards, shall be adjudg'd Good, except some Note in Writing be made of the same, and be Signed by the Parties, or their Agents, or the Buyer Accepts Part of the Goods Sold, or gives something in Part of Payment, or in Earnest for the Binding of the Bargain.

And further it is Enacted, that all Devises, of Lands or Tenements Devisable, shall, after the said 24th Day of *June*, be in Writing, Signed by the Devisor, or some other Person by his Directions, in his Presence, and be attested by at least three credible Witnesses; who are to Subscribe their Names in the Presence of the Testator; or else they shall be Void and of none Effect. And no Devise in Writing of Lands, Tenements, or Hereditaments, or concerning Goods or Chattels, shall be revoked, altered or changed, otherwise than by some other Will, or Codicil in Writing, also Signed by the Devisor, in the Presence of three or four Witnesses; or by Burning, Cancelling, or Obliterating the same by the Testator himself, or in his Presence, by his express Directions.

And be it Enacted, that no Nuncupative Will shall be Good, where the Estate bequeathed shall exceed the Value of Thirty Pounds, that is not prov'd by the Oaths of three Witnesses, present at the making thereof, bid by the Testator to bear Witness that such was his Will:



And unless such Nuncupative Will were made in the last Sickness of the Deceased, and in the House of his or their Habitation, except where such Person shall be surpriz'd with Sickness from Home, and Die before his Return. And the Testimony of such Will, is to be committed to Writing within six Days after the making of the said Will, otherwise such Testimony shall not be received. Any former Law or Usage to the Contrary notwithstanding.

And it is further Enacted by the Authority aforesaid, that all and every Gift, Grant, Alienation, Bargain, and Conveyance in Writing, of Lands, Tenements, Hereditaments, Goods and Chattels, or of any Lease, Rent, or other Profit out of the same; And all Bonds, Judgments and Executions, at any Time after the said 24th Day of *June*, to be had and made thereupon, for any Intent and Purpose, to defraud Creditors and others of their just Debts, shall be utterly void as against such Person or Persons, and his or their Heirs, Executors, Administrators and Assigns, who shall be in any wise disturb'd, hindered or defrauded thereby, in any Action, Suit, Debts, Accompts, or Damages whatsoever. And all and every the Parties to such fraudulent Gift, Grant, Alienation, Bargain, Conveyance, Bonds, Suits, Judgments and Executions, being Privy and Knowing thereof, who shall Maintain or Defend the same, as True, and done upon good Consideration; or who shall Alien or Assign any the Lands, Tenements, Goods, Leases, or other Things to him or them conveyed; shall Forfeit one Year's

Year's Value of the said Lands, Tenements and Hereditaments, and the whole Value of the said Goods and Chattels; and also so much Money as shall be mentioned in such Covenous Bonds; one Moiety to the King, his Heirs and Successors, and the other Moiety to the Party or Parties grieved, to be recovered in any of the King's Courts of Record, by Action of Debt, Bill, Plaint, or Information.

And further, for the avoiding of fraudulent Conveyances, it is Ordained, that all and every Conveyance, Grant, Charge, Lease, Estate, and Limitation of Use or Uses, of, in, or out of any Lands, Tenements, or other Hereditaments, that shall be had or made after the said 24th Day of *June*, for the Intent and Purpose to Defraud and Deceive any Person or Persons as have Purchased, or shall afterwards Purchase in Fee, for Life, or Years, the same Lands, Tenements and Hereditaments, or any Part thereof, or any Rent or Profit out of the same, shall only, as against the Person and Persons, his and their Heirs, Successors, Executors, Administrators and Assigns, and all Persons lawfully Claiming under them, which have or shall Purchase the said Lands, Tenements or Hereditaments, for Money, or other good Consideration, be utterly Void.

And be it Enacted, that all and every the Parties to such fraudulent Conveyances, or being Privy to or Knowing of the same, which shall put in Use, Avow, Maintain, or Justify the said Conveyances, as done and had, *Bona fide*, to the Disturbance of the Purchaser, Lessee, or Grantee, or their Heirs, Executors, Administrators,



nistrators or Assigns, or such others as shall lawfully Claim under them, or any of them, shall incur the Penalty and Forfeiture of one Year's Value of the Lands, Tenements, and Hereditaments so purchased, the one Moiety to the King, his Heirs and Successors, and the other Moiety to the Party or Parties grieved, to be recovered as above; and also being thereof Convicted, shall suffer Imprisonment for half a Year.

And be it further Enacted, that if any Person or Persons shall, after the said 24th Day of June, make any Conveyance, Gift, Grant, or Assurance of any Lands, Tenements or Hereditaments, with any Clause or Condition of Revocation, Determination, or Alteration of the same; and after such Conveyance, Gift, Grant or Assurance had or made, shall Bargain, Sell, Demise, Grant or Convey the same Lands, Tenements or Hereditaments, or any Part thereof, to any Person or Persons, for Money or other good Consideration paid or given, (the said first Conveyance not being revoked according to the Power therein reserved) then the said former Conveyance and Assurance, as touching the Lands afterwards conveyed, against the Bargainees, Venders, Lessees and Grantees, their Heirs, Successors, Executors and Assigns, and all Persons claiming under them, shall be Void and of none Effect.

Provided always, that nothing in this Act contained, shall extend to defeat or make void any Conveyance, Grant or Estate of, or in any Lands, Tenements or Hereditaments, made or to be made to any Person or Persons upon  
good

good Consideration; or any Mortgage made, *Bona fide*, and without Fraud; which shall stand in the like Force and Effect as the same should have done if this Statute had never been made. Any Thing in this Act to the Contrary in any wise notwithstanding.

This Statute to continue in Force from the aforesaid 24th Day of *June*, for the Term of Fourteen Years, and from thence to the End of the next Session of Parliament.

N. B. The Stat. 4 & 5 *W. & M.* Enacts, that if any Person, who having once Mortgaged Lands, Tenements or Hereditaments, shall Mortgage the same a second Time, without Discovering the first Mortgage, or without giving Notice of a Judgment formerly enter'd, the Mortgagor shall Forfeit his Equity of Redemption.

Here follows a Conveyance at Length, drawn according to the *Modern Practice*, which I have also Reduc'd.

### A Modern Conveyance of Lands.

**T**his Indenture, made the 1st Day of *September*, in the Year of our Lord, one Thousand seven Hundred Twenty and one, and in the seventh Year of the Reign of our Sovereign Lord George, by the Grace of God of

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Great



*Great Britain, France and Ireland King, Defender of the Faith, &c.* Between *A. B.* of the Parish of, &c. in the County of, &c. Gentleman, of the one Part, and *C. D.* of the Parish of, &c. in the County of, &c. Gentleman, of the other Part, *Witnesseth*, that the said *A. B.* for and in Consideration of the Sum of one Thousand Pounds, of lawful Money of *Great Britain*, to him in Hand paid by the said *C. D.* the Receipt whereof the said *A. B.* doth hereby Confess and Acknowledge; and for divers other good Causes and Considerations him thereunto moving, He the said *A. B.* hath granted, bargained, and sold, aliened, released and confirmed, and by these Presents doth fully, freely and absolutely Grant, Bargain and Sell, Alien, Release and Confirm unto the said *C. D.* (in his actual Possession now being, of the Messuage, Lands and Premises herein after mentioned, by virtue of a Bargain and Sale to him thereof made for one whole Year, by Indenture bearing Date the Day next before the Day of the Date of these Presents; and by force of the Statute for Transferring of Uses into Possession) and to his Heirs and Assigns for ever, All that Messuage, or Tenement, situate, lying and being in the Parish of, &c. in the County of, &c. now, or late, in the Tenure or Possession of, &c. and all Houses, Edifices, Buildings, Orchards, Gardens, Lands, Meadows, Pastures, Feedings, Commons, Woods, Underwoods, Ways, Paths, Waters, Watercourses, Easements, Profits, Commodities, Advantages, Emoluments, and Hereditaments whatsoever, unto the said Messuage or Tenement belonging, or in any wise appertaining,

taining, or which now, or at any Time heretofore have been accepted, reputed, taken, known, used, occupied or enjoyed, to or with the same, or as Part, Parcel or Member thereof; And also the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premises abovementioned, and of every Part and Parcel thereof, with the Appurtenances; And also all the Estate, Right, Title, Interest Claim and Demand whatsoever, as well in Equity as in Law, of him the said *A. B.* of, in, and to all and singular the said Premises abovementioned, and of in, and to every Part and Parcel thereof, with the Appurtenances; And also all Deeds, Evidences and Writings, touching or concerning the said Premises abovementioned only, or only any Part thereof, together with true Copies of all Deeds, Evidences and Writings which do concern the said Premises abovementioned, jointly with any other Lands, Tenements or Hereditaments, now in the Custody or Possession of him the said *A. B.* or which he can or may get or come by without Suit in Law, the same Copies to be made and written at the Request, Costs and Charges of the said *C. D.* his Heirs and Assigns. **To have and to hold** the said Messuage or Tenement, Lands, Hereditaments, and Premises abovementioned, and every Part and Parcel thereof, with the Appurtenances, unto the said *C. D.* his Heirs and Assigns, to the only proper Use and Behoof of the said *C. D.* his Heirs and Assigns for Ever. And the said *A. B.* for himself, his Heirs and Assigns, doth Covenant and Grant, to and with the said *C. D.* his Heirs and Assigns



Assigns, that he the said *A. B.* now is true, lawful and rightful Owner of the said Messuage or Tenement, and Premises abovementioned, and of every Part and Parcel thereof, with the Appurtenances. And also, that he the said *A. B.* now is lawfully and rightfully seised in his own Right, of a good, sure, perfect, absolute, and indefeazible Estate of Inheritance in Fee-simple; of, and in all and singular the said Premises abovementioned, with the Appurtenances, without any manner of Condition, Mortgage, Limitation of Use and Uses, or other Matter, Cause or Thing to alter, change, charge, or determine the same. And also, that he the said *A. B.* now hath good Right, full Power, and lawful Authority, in his own Right, to Grant, Bargain, Sell and Convey the said Messuage, or Tenement, and Premises abovementioned, with the Appurtenances, unto the said *C. D.* his Heirs and Assigns, to the only proper Use and Behoof of the said *C. D.* his Heirs and Assigns, for Ever, according to the true Intent and Meaning of these Presents. And also, that he the said *C. D.* his Heirs and Assigns, shall and may, at all Times for ever hereafter, Peaceably and Quietly Have, Hold, Occupy, Possess and Enjoy, All and Singular the said Messuage or Tenement, Lands and Premises abovementioned, with the Appurtenances, without the Let, Trouble, Hinderance, Molestation, Interruption and Denial of him the said *A. B.* his Heirs or Assigns, and of all and every other Person or Persons whatsoever. And that freed and discharged, or otherwise well and sufficiently Saved, and kept Harmless, and

and Indemnified of and from all former and other Bargains, Sales, Gifts, Grants, Leases, Mortgages, Jointures, Dowers, Uses, Wills, Entails, Fines, Post-Fines, Issues, Amerciaments, Seisures, Bonds, Annuities, Writings Obligatory, Statutes Merchant, and of the Staple, Recognizances, Extents, Judgments, Executions, Rents, and Arrearages of Rents, and of and from all other Charges, Estates, Rights, Titles, Troubles, and Incumbrances whatsoever, had, made, committed, done or suffered, or to be had, made, committed, done, or suffered, by the said A. B. or any other Person or Persons whatsoever, claiming, or to claim by, from, or under him. And further, that he the said A. B. and his Heirs, and all and every other Person and Persons, and his and their Heirs, any Thing having or claiming in the said Messuage or Tenement, and Premises abovementioned, or any Part thereof, by, from, or under him, shall and will at all Times hereafter, upon the Reasonable Request, and at the Costs and Charges of him the said C. D. his Heirs or Assigns, make, do, and execute, or Cause or Procure to be made, done, and executed, all and every such further and other lawful and reasonable Act and Acts, Thing and Things, Devise and Devises, Conveyance and Conveyances in the Law whatsoever, for the further, better, and more perfect Granting, Conveying, and Assuring of all and Singular the said Messuage or Tenement, and Premises abovementioned, with the Apurtenances, unto the said C. D. his Heirs and Assigns, to the only proper Use and Behoof of the said C. D. his Heirs



Heirs and Assigns for ever, as by the said C. D. his Heirs or Assigns, or his or their Counsel learned in the Law shall be reasonably Devised, and Advised and Required. And Lastly, it is covenanted, granted, concluded, and agreed upon, by and between the said Parties to these Presents, and the true Meaning hereof also is, and it is hereby so declared, that all and every Fine and Fines, Recovery and Recoveries, Assurance and Assurances, Conveyance and Conveyances, in the Law whatsoever already had, made, levied, suffered, executed and acknowledged, or at any Time hereafter to be had, made, levied, suffered, executed and acknowledged, of the said Messuage or Tenement, and Premises, by or between the said Parties to these Presents, or either of them, or by or between them, or either of them, and any other Person or Persons, either alone by it self, or jointly with any other Lands, Tenements or Hereditaments, as for and concerning All and Singular the said Premises abovementioned, with the Appurtenances, shall be and Enure, and shall be adjudged, esteemed and taken to be and Enure, to and for the only proper Use and Behoof of the said C. D. his Heirs and Assigns for Ever, according to the true Intent and Meaning of these Presents, and to and for none other Use, Intent or Purpose whatsoever. In Witness whereof, the Parties above named have hereunto put their Hands and Seals, the Day and Year above written.

The

## The Preceding Conveyance Reduc'd.

**T**his Indenture, made the 1st Day of September, in the Year of our Lord 1721. Between *A. B.* of, &c. in the County of, &c. Gentleman, of the one Part, and *C. D.* of, &c. in the County of, &c. Gent. of the other Part, Witnesseth, that the said *A. B.* in Consideration of the Sum of one Thousand Pounds, to him in Hand paid by the said *C. D.* Hath granted, bargained and sold, aliened and confirmed unto the said *C. D.* and his Heirs, All that Messuage or Tenement situate, &c. in the County of, &c. now in the Possession of, &c. and all Houses, Buildings, Gardens, Orchards, Lands, Woods, Ways, Waters, Easements, and Advantages whatsoever, to the said Messuage or Tenement, now, or at any Time heretofore Belonging or Appertaining; And also all the Estate, Right, Title, Interest, Claim and Demand whatsoever of him the said *A. B.* of, in, and to the same: To have and to hold the said Messuage or Tenement, and Premises, with the Appurtenances, unto the said *C. D.* his Heirs and Assigns for Ever. And the said *A. B.* and his Heirs, the said Messuage or Tenement, and Premises abovementioned, with the Appurtenances, to the said *C. D.* his Heirs and Assigns, against him the said *A. B.* and his Heirs, and all other Persons, shall and will Warrant, and for



for ever Defend by these Presents. In Witness whereof the Parties above named have hereunto put their Hands and Seals.

*N. B. This Deed is Shorter than Bargain and Sale.*

### Registry of Deeds and Conveyances.

**T**O what I have already hinted, I shall add an Observation or two on a *General Registry of Deeds and Conveyances*; than which, no Man can have a greater Security: For tho' our Laws in Being are Strict in the Construing Fraudulent Deeds, Void and of no Force; yet the Difficulty to prove some private Deeds Fraudulent, frequently evades and frustrates the Intention of the Law.

Why this great Barrier of Property should be confined to *Yorkshire and Middlesex* only, (as it is at present) I do not Understand: If it be of Use in those Counties, of which there is no Doubt, there is the same Reason for making it Universal. And by a *Law for a General Register of Deeds*, Purchasers would be entirely safe in laying out their Money on Lands; and the Value of *Estates* be considerably encreas'd by the *Certainty of Title*: Money would be freely advanced on Mortgages, without any Scruple or Suspicion; by which Means the *Interest* of it would be lower'd, and *Trade* thereby be the more effectually

effectually carry'd on: The Farmer would be sure of the Honest Landlord he had chosen, from which Encouragement, *Husbandry* would be Improv'd: And, in short, *all* Men would be rendred *Secure* in their *Properties*.

And to make a Law of this kind the more Useful; I would Propose, that the Lord Chancellor should appoint the several Registers of Counties, and that they should all of them Annually Transmit their Registries to him; so that the High Court of Chancery might, in Time, know who are the Owners of all the Estates in the Kingdom; which, besides being a Valuable Knowledge in other Respects, would in a great Measure prevent a great many expensive and vexatious Suits, and unjust Prosecutions.

Thus I have gone through what I design'd, relating to the *Amendment* and *Reduction* of our Laws: And I hope no Gentleman of the Law, or others, will think ill of me, for that I have endeavour'd to render their Studies in general more Easie; for that I have been in some measure an Advocate for Liberty and Property; and have pointed out the Means to extirpate Corruption.

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F I N I S.



effectually to do so: The Law  
 of the House of Commons  
 which has been passed  
 to improve the condition of  
 the poor, and to improve  
 the condition of the poor  
 and to make a law of this kind the more  
 useful, I would propose that the Lord  
 should appoint the several members of  
 the House of Commons, and they should all of them An-  
 nually transmit their abilities to him, to that  
 the House of Commons might in this  
 manner who are the owners of all the houses in  
 the Kingdom; which, besides giving a valuable  
 knowledge in other respects, would in a great  
 measure prevent a great many expensive and  
 vexatious suits, and unjust Prosecutions.



